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The Solicitors' Journal

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Current Topics.

Contempt of Court.

THE decision last week of the Divisional Court that proceedings for contempt cannot be settled by agreement between the parties but must be dealt with by the tribunal whose authority, dignity, or jurisdiction has in some way been flouted, is thus a reminder that our courts do not lightly regard anything which can be construed as contempt. Almost from the beginning of our legal history the courts have had on occasion to exert their powers to punish those who were guilty of the offence, and sometimes these were exercised in a way to strike terror into evil-doers or those who sought to bring contempt upon the administration of justice. In more recent times the usual punishment in ordinary cases has been a fine and an order for the payment of costs, while in more serious cases a sentence of imprisonment may be imposed. An evil-disposed person can show his contempt of the court in a great variety of ways: he may exhibit his evil tendency and determination to annoy the court or the judge by discharging a missile at the Bench as was done by the crazy litigant who threw an egg at Vice-Chancellor MALINS, but that learned judge, instead of committing the miscreant to prison forthwith, merely remarked that the missile must have been intended for "my Brother Bacon"; or the missile may be, as it was in a case at quarter sessions, where an infuriated prisoner flung a leaden inkpot at the learned recorder; or the offence may be the comparatively innocent one of reading a newspaper in the face of the court, for, as the late Mr. OSWALD reminded us, the reading of newspapers, "even the most respectable," is deemed an affront to the court and as such to be discountenanced; or, again, the offender may be a member of the Bar appearing not garbed as sedately as use and wont determine that he should be. Did not Mr. Justice BYLES on one occasion administer this reproof to Mr. (afterwards Lord Chief Justice) COLERIDGE, whose nether limbs were clad in garments of a lighter hue than the judge opined they should be: "Mr. Coleridge, I never listen with any pleasure to the arguments of counsel whose legs are encased in light grey trousers." Not long ago a junior member appeared in court with a waistcoat which was not of the orthodox black and judicial notice was taken of the fact. Thus, while the history of contempt of court has its lighter side, it is well to bear in mind that it is no small thing for a litigant or other person in which to indulge, and if he does indulge in it he does so at his peril.

The Lessening Shadow of the Landowner.

SIR WILLIAM HART'S address on the subject of the compulsory acquisition of land for public purposes, delivered at The Law Society's recent annual provincial meeting, will be provocative of considerable thought amongst the legal profession generally, and particularly amongst solicitors acting on behalf of property owners. Sir WILLIAM began by showing how, in the early days, this compulsory acquisition was "sweetened by liberal compensation which the expropriated owner was entitled to have awarded to him." The sugar on the pill at that time took the form of an extra 10 per cent. allowance for the fact that the acquisition was compulsory, and a further allowance for special adaptability. Sir WILLIAM next proceeded to show how this measure of compensation has been gradually reduced, and illustrated his argument by reference to the Acquisition of Land (Assessment of Compensation) Act, 1919, the Housing Act, 1930, and the Town and Country Planning Act, 1932. With regard to the 1932 Act, Sir WILLIAM stated: "The compensation he will receive for interference with his rights will, it may be hoped, be adequate and satisfactory." This is a most peculiarly worded comment, and it is probable that the prophecy would have been more nearly accurate had it read: "The compensation will, it is expected be inadequate, unsatisfactory and in a multitude of cases non-existent." In regard to the Housing Act, 1930, Sir WILLIAM appears to have decided to steer clear of any reference to the notorious "reduction-factor."

The Protection of Landowners by the Legal Profession.

SIR WILLIAM HART concluded his address with the following comment: "It is for the legal profession, which will be so largely interested in the enforcement of these laws, to see to it that the rights of the landowner are properly protected, so that the lessening shadow of his authority over his own land may be acquiesced in by reason of the knowledge that the curtailment of his powers is adequately compensated for both in money and amenity." The difficulty in this is that the landowner does not feel at present that the compensation is adequate, and consequently a bitter fight is being waged against what is regarded by him as confiscation. If the present tendency towards a lower rate of interest on gilt-edged securities is maintained, the value of property must automatically increase and the measure of the landowner's loss be greater. It is certain that property owners will continue to oppose the enforcement of these laws and to take every available point that is open to them in an endeavour to save their own property. It is in the conducting of these cases that the legal profession will be most interested in seeing that the rights of the landowner are properly protected.

Police Reform.

THE economic aspect of the increase in crime is one which has not yet received as much attention as it deserves. The matter is raised in an article by Inspector W. K. JONES, of the Birkenhead Borough Police Force, in an interesting article in the October issue of the *Police Journal*. After stating the well-known fact that the cost of crime in this country is enormous, and that public money drains away in the heavy costs of the administration of justice and in the maintenance of penal, punitive and remedial establishments, the inspector goes on to say that the wisdom of reasonable expenditure on crime prevention should need no emphasis. "Money wisely applied in the perfection of the police machine," continues the article, "is not only amply justified from the viewpoint of moral and national welfare, but would almost certainly eventually result in an actual net saving to the Exchequer."

The inspector therefore suggests that a committee of police experts should be appointed by the Home Secretary to conduct a searching inquiry as to methods of patrol, criminal investigation, traffic duties, police training and office administration at present in vogue and to recommend to the Home Secretary a model system or systems in outline, for general adoption by all police forces. The committee should also, it is stated, investigate thoroughly the merits and possibilities of any modern devices likely to assist the work of the police, and make recommendations. The enormous cost of crime in London alone is illustrated by the figures recently published in Lord TRENCHARD'S report for 1931 (see 76 SOL. J. 550), and the substantial plea of the article that money can wisely be spent on the perfection of the police system is one with which only those who believe that our police system is already perfect will quibble. While a great deal can be done by the community to assist the police in the protection of life and property, the prudent provision of public funds can achieve much in the direction of making our police system "a lidless watcher of the common weal."

Fresh Consideration in Gaming.

IN a recent action before Judge THOMAS at Cardiff, the plaintiff, a bookmaker, sued the defendant for a debt on which the latter pleaded the Gaming Act. The plaintiff admitted that the claim arose from betting, but pleaded fresh consideration on his forbearance to report the matter to Tattersall's, a forbearance induced, according to his story, by the defendant's renewed promise to pay. The alleged new agreement was verbal, and the defendant denied its existence. His Honour, accepting the latter's evidence, gave judgment in his favour. Incidentally, however, he made two comments on the claim, first that Tattersall's ban could not prevent the defendant from attending races, and secondly, that the defendant not being a bookmaker, the ban could not otherwise affect him. As to the first point, the judge observed, no doubt truly, that Tattersall's could not exclude the defendant from Epsom Downs, but he overlooked the fact that most courses are enclosed, and operate according to rules under which individuals "posted" at Tattersall's are forbidden to enter. So far as such individuals are recognisable, and recognised by the race-ground gatekeepers, therefore, the ban has real force, as even a certain Marquis who was "warned off the turf" in the later years of QUEEN VICTORIA discovered. On the second point, it is true that the defendant in *Hyams* v. *Stuart King* [1908] 2 K.B. 696, the leading case as to fresh consideration, was a bookmaker, but there have been cases where persons not bookmakers have been held to be bound by the fresh promise, by reason of the disagreeable consequences which might ensue to them if it became known that they did not pay their bets, such as expulsion from clubs, etc. Thus, in *Goodson* v. *Grierson* (1908), 52 SOL. J. 599, a case decided subsequently to and following *Hyams* v. *Stuart King*, it did not appear that defendant was a bookmaker, but CHANNELL, J., who regretted the result of this authority, followed it on the footing that the avoidance of anything disagreeable or disadvantageous to the debtor would bring a case within the decision. He instanced the fact of being regarded as a defaulter, or having to raise a loan from a bank. In *Re Comar* (1908), 52 SOL. J. 642, judgment in a similar case was for the defendant, an outside broker, on the ground that there had been no threat by the plaintiff to declare him a defaulter, but from the judgments in the Court of Appeal it appeared that on proof of such a threat, the action would have been successful. No doubt the defendant's credit in his business in that case would have been seriously impaired by a betting default. In the case before Judge THOMAS, since he found the new agreement alleged by the plaintiff unproved, his decision did not of course turn on the matters discussed above. As to the law laid down in *Hyams* v. *Stuart King* being in derogation of s. 18 of the Gaming Act, 1845, and possibly leading to blackmail, see "Pressure on a Money Demand," (76 SOL. J. 21).

Wayside Trees and Local Authorities.

IN the recent case of *Stillwell* v. *New Windsor Corporation* [1932] 2 Ch. 155; 76 SOL. J. 433, a dispute arose relative to the rights of local authorities and neighbouring landowners with respect to wayside trees. The matter is one of both private and public interest, for a house owner will ordinarily desire to retain trees which, in addition to their ornamental value, act as a screen from road traffic while the trees themselves may—as they did in the case in question—obstruct the public in their user of the highway. A short examination of the legal position may, therefore, be of interest.

The Highways Act, 1835, by s. 64, enacts "That no tree, bush, or shrub shall hereafter be planted on any carriageway or cartway, or within the distance of fifteen feet from the centre thereof; but the same shall respectively be cut down, grubbed up, and carried away by the owner or occupier of the land or soil within twenty-one days after notice to him or his agent by the surveyor, on pain of forfeiting for every neglect the sum of ten shillings."

In the case just mentioned it was contended for the plaintiff, who had been served with a notice requiring her to remove the trees, that the principle of *Fisher* v. *Prowse* (1862), 2 B. & S., applied, and that the dedication of the road should be presumed to have been made subject to an exception of the land occupied by the trees. In that case, where a householder was held to be free from liability for injuries caused to a passer-by by a projecting cellar flap, Blackburn, J., spoke of the unlawfulness of obstructions to existing highways, and continued: "but the question still remains, whether an excavation already existing, and not otherwise unlawful, becomes unlawful when the land on which it exists, or to which it is immediately contiguous, is dedicated to the public as a way, if the erection prevents the way from being so convenient and safe as it otherwise would be; or whether, on the contrary, the dedication must not be taken to be made to the public, and accepted by them, subject to the inconvenience or risk arising from the existing state of things. We think the latter is the correct view of the law." It was pointed out that dedication was not obligatory upon the owner, nor was acceptance compulsory on the part of the public.

Turner v. *Ringwood Highway Board* (1870), L.R. 9 Eq. 418, illustrates an opposite, although not necessarily a conflicting, principle. A public road had been set out across a common by Inclosure Commissioners. Only about 25 feet of the road, which, as allotted, was double that width, had in fact been used. Some fifty-seven years later the highway authority began to cut down, and advertised a sale of, fir trees which had sprung up upon the unused portion. The plaintiff, who held land by the roadside, filed a bill to restrain the removal of the trees. In giving judgment for the defendants, James, V.C., said: "*Primâ facie*, it would be difficult to say that anyone had the right to prevent the proper guardians of the highway from cutting down any trees which are a permanent obstruction to the use by the public of any part of the highway." Such right, moreover, extended over the whole width of the road and was not confined to that part which had become the *via trita* by usage.

The crucial factor in more recent cases of this character has been s. 149 of the Public Health Act, 1875, which provides: "All streets, being or which at any time become highways repairable by the inhabitants at large within any urban district, and the pavements stones and other materials thereof, and all buildings implements and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority." The section prescribes certain functions for the authority to perform—among them causing "the soil of any such street to be raised lowered or altered"—and imposes penalties upon persons who, *inter alia*, injure the trees.

The difficulty has always been to discover exactly what vests under the Act. In *Coverdale* v. *Charlton* (1878), 4 Q.B.D.

104, it was held that the soil of a public highway within the Act so far vested in the local authority that the latter was in a position to demise the right of pasturage thereon. In the course of a judgment delivered in the Court of Appeal, Bramwell, L.J., said: "What then is the meaning of the word 'vest' in this section? The legislature might have used the expression 'transferred' or 'conveyed,' but they have used the word 'vest.' The meaning I should like to put upon it is, that the street vests in the local board *qua* street; not that any soil or any right to the soil or surface vests, but that it vests *qua* street. I find some difficulty in giving it a meaning, and I do not know how far it adds to the words, 'shall be under the control of.' The meaning I put upon the word 'vest' is, the space and street itself, so far as it is ordinarily used in the way that streets are used, shall vest in the local board. I will refer to a few instances in support of this construction. The streets vest; the pavement, the stones, and other materials vest; all buildings vest which would seem to mean railways, and building implements which are chattels, and other things 'vest' in the local authority." On the question—hypothetical relative to the matter before the court—whether the liability for injury to trees meant that the local authority had "a property in the tree and in the soil" the learned Lord Justice went on: "I doubt very much whether that ought to be the construction put upon that enactment, but if it is, it goes a long way to show that the local board had such a property as they claim in this herbage. Even if it does not, if it will not apply to the tree which although surrounded by the street could be said in one sense to be no part of it, for the public had no right to pass over where the tree stood; and if it does not apply to a tree now in existence, but only to trees that the local board may plant or become otherwise entitled to, why even then it would show that they must have some property in the soil and its produce; that would assist the contention in favour of the plaintiff [to whom a right of pasturage had been demised]."

An inference—false as it turned out from the subsequent decision of the Court of Appeal—was drawn from this case by Jessel, M.R., in *Rolls* v. *Vestry of St. George the Martyr, Southwark* (1880), 14 Ch. D. 785, where it was ultimately decided that no interest in the local authority survived the legal stopping up or diversion of the way. The learned Master of the Rolls said: "Thus all three judges [in *Coverdale* v. *Charlton*] agree that the property in the street, which means not merely the surface, but the surface and the subsoil to a considerable depth, vests in the vestry or the district board." Section 96 of the Metropolis Local Management Act, 1855, provided that "the streets being highways, and the pavements, stones, and other materials thereof" should vest in and be under the management of the vestry, and s. 154 of the same Act empowered the vestry to "sell and dispose of any land purchased by them" under the Act. The contention of the plaintiff that it was absurd that the vestry should be considered to be authorised to sell streets was rejected. "I prefer," said the learned Master of the Rolls, "to adhere to the literal meaning of the words, which to my mind are free from ambiguity, and therefore the argument of reasonableness has no place. It seems to me the case is covered by the decision in *Coverdale* v. *Charlton*. The moment you decide that the property to this depth is vested in the board, they may, when they do not want it, sell it, because it may properly appear to them that it should be sold, and no doubt the legislature contemplated that they might apply the proceeds in the purchase of a substituted or other street which may be made when this is rendered useless." The Court of Appeal took a different view of the implications to be derived from *Coverdale* v. *Charlton*. Thus James, L.J., said: "What that case decided, and all that it was necessary to decide in that case, was that something more than an easement passed to the local board, and that they had some right of property in and on and in respect of the soil which would enable them as owners to bring a possessory action against trespassers. Now what was that something more? It is impossible to read any of the three judgments delivered on that occasion without seeing that in the view of the learned judges the soil and freehold in the ordinary sense of the words 'soil and freehold,' that is to say, the soil from the centre of the earth up to an unlimited extent into space, did not pass, and that no *stratum* or portion of the soil, defined or ascertainable like a vein of coal, or *stratum* of ironstone, or anything of that kind, passed, but that the board had only the surface, and with the surface such right below the surface as was essential to the maintenance, and occupation, and exclusive possession of the street, and the making and maintaining the street for the use of the public."

The words of Cotton, L.J., who was one of the members of the Court of Appeal, delivering judgments in *Coverdale* v. *Charlton*, provide a peculiarly illuminating commentary on the scope of that decision. The Lord Justices there decided that the subject vested was "a material thing," and not a mere incorporeal right to protect the passage of the public over the highway. "But," Cotton, L.J., continued, "they decided nothing as regards the duration or extent of the estate or interest in that material or physical thing. The estate or interest of the local board, whatever it was, was in that case undoubtedly still continuing in them, and none of the judges, so far as I can see, intended, and certainly I did not intend, to decide what was the period for which this material thing was vested in the local board." On this point the learned Lord Justice, taking the words "streets being highways" in the Statute as meaning "streets for the time being used as highways," said: "The duration or period of the estate then is that during which the street is used as a highway, and as future streets when they become highways will become vested in the local board, so existing streets when they cease to be highways will be no longer vested, the period of the estate vested in the local board having under the words of the section ceased when the purpose for which they were vested has ceased." Thus both the quantum and the duration of the interest are ascertainable in the light of one overriding consideration—the purpose of vesting.

The position with regard to s. 149 of the Public Health Act, 1875, becomes clearer in the light of the most recent decision on the matter—that in *Stillwell* v. *New Windsor Corporation, supra*. Of the trees in question, some were—as it was found—so unstable through disease and decay as to be a danger to the public and a nuisance to the highway in which they were, others threatened to become so, and others again constituted a danger to traffic and a nuisance. Commenting on the argument that the trees were "part of the 'street' . . . things provided for the purposes of the street . . . an amenity of the street, possibly, as marking off the footway from the carriageway, a convenience and a protection to the public," and that under the section aforesaid they vested in and were under the control of the local authority, Clauson, J., said: "It is pointed out that, if the trees are injured, compensation for the injury is to be paid to the local authority; that would suggest that the property in the trees would be in the local authority. It is pointed out further that a penalty is put upon persons who without the consent of the local authority wilfully displace the trees; this would seem to imply that displacing the trees with the consent or by arrangement with the urban authority would not be an offence, which again fits in with the suggestion that the effect of this section is to place the control and, in some sense or other, the property in the trees in the local authority." His lordship concluded: "In my view that is the effect of the section as regards such trees as those with which I am now dealing. In my view, for all the purposes of exercising the rights of the highway authority, these trees are to be treated as highway authority's trees, and if they think it convenient to remove them it is proper that they should

remove them." The learned judge then noted that he was not in that action called upon to decide to whom the timber would belong when the trees were removed. Allusion is made to the doubts expressed by Bramwell, L.J., in *Coverdale* v. *Charlton*, concerning the vesting of highway trees (*vide supra*), but that case, as Clauson, J., read it, "did determine this . . . that there was a right of property, of some kind at all events, vested in the highway authority, in the herbage growing in the soil of the highway; and," his lordship added, "I have some difficulty in seeing why there should not be a similar right of property, however far it extends, in the other vegetable growth in the soil of the highway which is constituted by the trees in the case with which I have to deal." It was held, moreover, that the trees had been planted subsequent to dedication, and that the defendants were justified in having removed some of them which had been proved to be a nuisance to the highway, and indeed were under a duty to do so, even if it were assumed that the plaintiff had some right of property therein, and, finally, that apart from nuisance, they were entitled to remove the remainder as obstructions to the public who were entitled to use the whole area of the highway: see *Turner* v. *Ringwood Highway Board, supra.*

Company Law and Practice.

CLII.

CONVERSION AND NEW ISSUES.

THE largest conversion operation that this country, or any other, has ever known has come to a triumphant conclusion, and, following on the relaxation of the embargo on capital issues, there is considerable activity in company circles, both in regard to conversion operations and in regard to fresh issues. There are very many companies at the present time which have outstanding either debentures, or preference shares, or both, which carry a rate of interest higher than that now prevailing, and which rate represents to-day a very substantial burden: and a burden the incidence of which it is very desirable to lighten, if possible. Most of these high rates of interest were the product of their dates of origin, and many companies which issued irredeemable debentures, or debentures not yet redeemable, or preference shares, in the post-war period, are beginning to wish that they hadn't done so.

Frequently, of course, the company can relieve itself of a part of its interest burden without undue difficulty: thus, where debentures are redeemable, the company can redeem them, obtaining the wherewithal by a fresh issue at a lower rate of interest—there is, however, a useful alternative to this course which is frequently available, and that is, to get the rate of interest lowered by a meeting of debenture-holders, though this is only possible where the trust deed, or the debentures, contain the usual modification of rights clauses. One of the advantages of this latter method, where practicable, is that it saves time and money, there being no fresh *ad valorem* mortgage duties; and one of its disadvantages (and a very considerable one) is that it is not possible for the directors to know beforehand, in the great majority of cases, whether the requisite majority of debenture-holders will be obtained; further, it is necessary to look for something in the nature of a sop to give to the debenture-holders, whereas you can more or less arrange your own terms on a new issue. This latter may sound rather a wide statement, but I think those familiar with the practical side of this subject will agree with me that it is easier to fix up satisfactorily the terms of a new issue than to decide just how much *quid* you must give for your *quo* when modifying the rights of debenture-holders. Preference shares carrying a high rate of interest present a much more difficult problem—we can ignore for the purposes of this discussion redeemable preference shares, for it is doubtful whether there are many such carrying a harassingly high rate of interest, and in any case their numbers are small compared with the legion of non-redeemable preference shares.

One question, however, which experience shows frequently to come the way of the practitioner, is this: Is it possible to convert issued preference shares which are non-redeemable into redeemable preference shares? If it were, the difficulty which I have indicated, though it would not entirely disappear, would be much less of a difficulty. But it is quite clear that the answer must be a negative—s. 46 of the Companies Act, 1929, gives power to *issue* redeemable preference shares, consequently a share which has once been issued as non-redeemable cannot be converted, for shares, to be redeemable, must be issued as such. These preference shares, then, must be dealt with as best they can; and, just as it is possible to vary the debenture-holders' rights, it is frequently also possible to vary the preference shareholders' rights; practically, it is generally not easy to do so, for again the question of the *quid pro quo* arises. But there is an alternative, though generally available only to prosperous companies, and not as a matter of course to every company.

This alternative is to reduce the company's capital by paying off capital in excess of the wants of the company, and there are decisions which are of the greatest possible assistance in taking this course. Section 55 of the Companies Act gives to companies, if so authorised by their articles, a power, *inter alia*, to reduce share capital by paying off any paid-up share capital which is in excess of the wants of the company. Now take the case of a company having an issue of, say, 10 per cent. preference shares: the company has been uniformly prosperous and successful, and has accumulated large surplus liquid assets. It may well be in a position to reduce its capital in the manner suggested (I do not propose here and now to make any general examination into the problems arising in connection with reduction of capital, for the theme of this article is not directly concerned with it), but the chief difficulty which is likely to face such a company is this: that it can only reduce its capital in accordance with the rights which the shareholders would have on a winding up, that is to say, when paying off capital, the shareholders who, on a winding up, would be first entitled to have their capital returned, must be paid off first. A 10 per cent. preference share is likely to be only a second preference share, and thus the consent of the first preference shareholders would be necessary in such a case, for a reduction in accordance with the rights of the shareholders in a winding up only a special resolution of the company is necessary, but once you go outside that, class meetings must be called.

Just one further point in connection with a proposed reduction of this kind: I have said above that this method of procedure is generally available only to prosperous companies, but this is not an inflexible rule, and for this reason, that what s. 55 (1) (*c*) requires is that paid-up share capital shall be in excess of the wants of the company; not that the company's liquid resources are in excess of its wants; so that if the company can get the money which it has by way of share capital in a better way, such as by borrowing at a lower rate, the court will, in a proper case, sanction such a course, thus, in effect, changing share capital for what is perhaps conveniently, but quite erroneously, referred to as loan capital. As I have said, I am not here intending to amplify the law relating to reduction of capital, but in this connection I should give two references for those of my readers who wish to pursue the subject further: *Re Nixon's Navigation Co.* [1897] 1 Ch. 872, and *Re Thomas de la Rue & Co.* [1911] 2 Ch. 361.

Having attempted to indicate shortly the chief points to be considered in connection with conversion operations—and how often one is compelled to advise one's clients that there is no way of lightening their burdens—I propose to deal with the other operation which is now more in the minds of people than it has been for many a long year—the question of new

issues ; and this brings us naturally to the prospectus, to which I propose to devote some little space. But the prospectus is not, of course, an essential of every new issue; frequently such an issue will be disposed of privately ; it may then become the subject of an offer for sale, but that is not quite the same thing, though it will engage our attention in this series of articles at a later stage.

The law has seen fit to lay down elaborate requirements with regard to a prospectus, and the importance of this document can hardly be exaggerated, from whatever point of view it is looked at. If it were possible for a prospectus to be issued containing only such information as the issuers thought fit to give, one can well understand what abuses might arise ; and, though there is no means of compelling the insertion of all that the law requires (other than by means of the sanctions which may subsequently follow) and no means (other than fear of the probable consequences of inaccuracy) of ensuring the accuracy of the statements actually made in the prospectus, yet these means are amply sufficient to render even the most unscrupulous rather careful when a prospectus is being drafted.

At this point it would perhaps be reasonable to enquire what a prospectus is. We all know that long advertisement which usually occupies the width of two columns and the whole length of the page in a newspaper, and probably most of us dismiss it without a thought, after mentally docketing it as a prospectus. Here I may pause to remark that experience shows how comparatively rare it is for an intending investor to read the prospectus on the terms of which he subscribes ; I do not refer, of course, to the professional investor, but to that large body of persons who may put a little money in the blank company, because so-and-so told them it was a good thing ; and there are undoubtedly cases where a solicitor can be of assistance by urging his client to go into the whole thing—perhaps not so much in any particular case as by encouraging his client to take up a generally inquisitive attitude. There would have been far less trouble and disturbance over shady finance in the last few years, if the average Englishman had only been less indolent over his own personal affairs, and it is this lethargic attitude towards his own concerns that the solicitor should strive to persuade his client to combat. Now I am afraid the space at my disposal is used, and I must deal next week with the meaning of the word " prospectus."

(*To be continued.*)

A Conveyancer's Diary.

Concurrent Mortgage Terms.

Some time ago there was a question put and answered in the " Points in Practice " column of this journal, which resulted in some correspondence. The last letter on the subject received by the Editor is that of " R. A.," which is published in this week's correspondence column.

I am not, of course, at liberty to answer specific questions upon a matter arising in actual practice, but I suppose that the conveyancing point raised has long since passed into the limbo of things already done rightly or wrongly, and may be now regarded as one of general interest upon which I am free to comment, and I am grateful to " R. A." for suggesting that I should do so.

In effect the question raised was as follows : A being the owner in fee simple of land, mortgaged it in 1926 to B and later made further mortgages to C and D. All three mortgages were by demise for terms of 3,000 years commencing at different dates. The mortgages to C and D were not expressly declared to take effect in reversion expectant on the termination of the prior mortgage or mortgages. What is the position of D, the third mortgagee ? (1) Has D any legal estate ? (2) Has he any power of sale ?

My answer to both questions is Yes.

Firstly, with regard to the estate which the third mortgagee takes. I think that it is quite clear that he has a legal estate for his term of 3,000 years and it is immaterial that there may be other legal terms of years existing concurrently with his and expiring before or after his term.

Perhaps I had better state what the law on the subject of concurrent leases was before 1926 and then refer to the pertinent provisions of the L.P.A., 1925, to see whether any, and, if any, what alteration has been made in it.

I think that the law as it existed before 1926 was laid down in *Doe* v. *Brown*, 2 El. & Bl. 331. That case says that where a party entitled to a remainder in tail expectant upon the determination of a life estate grants a term of years to commence immediately the grantor without entry takes an immediate vested estate carved out of the remainder, the Statute 4 Anne c. 16, s. 9, making the lease as effectual as if attornment had been made. The grant of the lease passes the reversion *pro tanto*. In his judgment, Lord Campbell, C.J., said: " The effect of this doctrine with regard to leases carved out of the reversion or remainder is very distinctly stated in Bac. Abr. Tit. Leases (N.), vol. 4, p. 846, 7th ed. If the grantees of such leases could not obtain an attornment they might at their election treat the grant as an *interesse termini* ; but when they obtained the attornment the grant operated as a conveyance of so much of the reversion," and he goes on to say that the Statute 4 Anne c. 16, s. 9, made attornment unnecessary and, consequently, a lease of a remainder or reversion creates a legal estate operating as a grant of the remainder or reversion for the period of the lease.

So if there be a lease to A for 1,000 years and a subsequent lease to B for 100 years, B takes a legal estate which is concurrent with that of A ; and A must pay the rent reserved by his lease to B so long as B's term runs and if A's term be surrendered or extinguished during the subsistence of B's term the latter is entitled to possession for the remainder of his term.

I think that was (and still is) the law, and it does not matter whether the terms of years are mortgage terms or not.

There is, however, authority confirming this view so far as mortgage terms are concerned.

In *Re Moore and Hulm's Contract* [1912] 2 Ch. 105, the facts were that leaseholds were mortgaged by sub-demise for the residue of the original term except the last day. Afterwards by another mortgage they were sub-demised to a second mortgagee for the residue of the original term except the last day, subject to the first mortgage. The second mortgage was paid off during the continuance of the first mortgage and the mortgage deed handed back to the mortgagor. A purchaser of the leaseholds from the mortgagor declined to complete without a formal surrender being obtained of the term created by the second mortgage. It was held that by the second mortgage there was vested in the mortgagee a legal term which was not determined nor revested in the mortgagor by mere repayment of the principal money and interest, and that the purchaser was entitled to require a surrender or assignment of the outstanding residue of the term created by the second mortgage.

That seems conclusive as to the law before 1926, and I do not think that the L.P.A., 1925 has made any alteration in it. On the contrary, the law as it stood is confirmed by the Act.

Firstly, there is s. 1 (5) which enacts that " A legal estate may subsist concurrently with or subject to any other legal estate in the same land in like manner as it could have done before the commencement of this Act."

There may therefore be now, as there might have been before the Act, any number of terms of years all being legal estates existing in the same land and taking effect concurrently.

Then there is s. 149 (5) which provides that "Nothing in this Act affects the rule of law that a legal term, whether or not being a mortgage term, may be created to take effect in reversion expectant on a longer term, which rule is hereby confirmed."

In this sub-section the expression "a longer term" should read "any other term"—but I suppose that it was considered that a "shorter term" (i.e., one expiring earlier) was a case too clear to require any confirmation.

The rule of law here confirmed is that which I have already stated—namely, that a legal term may be made to take effect in reversion expectant upon another term which would (if both run their course) last the longer. So, a legal term for 100 years commencing to-day may be created in reversion expectant on a term of 1,000 years which commenced yesterday.

Turning now to the question with which I commenced, there can be no doubt that D had a legal estate for the term of 3,000 years created by his mortgage.

Then as to the power of sale of D, I do not think that there can be any doubt. A conveyance by him in exercise of his statutory power would be effectual "to vest in the purchaser the fee simple in the land conveyed subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured": L.P.A., 1295, s. 88 (1) (*a*).

Consequently D could sell and convey the fee simple to a purchaser subject to the mortgages to B and C which have priority to his.

The contention that in such a case D could not sell and convey a legal estate subject to prior incumbrances is in my opinion quite wrong, and I agree with "R. A." that it is immaterial whether D's term is created so as to last for a longer or a shorter time than those of other (prior) mortgagees.

It is true that under the transitional provisions of the L.P.A. (1st Sched., Part VII) the estate of a first mortgagee is converted into a term of 3,000 years and of a second and subsequent mortgagees for a day longer than that of the immediately prior mortgage, and that in an example given in the abstract in the 6th Sched. (Specimen No. 1) there is stated to be a first mortgage for 1,000 years, a second mortgage for 2,000 years, and a third for 3,000 years, but, as I think I have shown, there is no need for any such overlapping of the terms. A second mortgage may be for a shorter term than the first, and a third for a shorter term than the second, and so on, and any of the mortgagees may sell the freehold reversion where his power of sale has become exercisable, subject to the terms created by earlier mortgages and to the money thereby secured.

Landlord and Tenant Notebook.

Usque ad Medium Filum.

The presumption that a grant of land adjoining a highway or a river carries with it half the soil of the highway or half the bed of the river has not played a very considerable part in litigation between landlord and tenant. The presumption, when referred to, is almost invariably described as a "strong" one, the reason for the respect so shown being no doubt the rule applied in *Micklethwait* v. *Newlay Bridge Co.* (1886), 33 Ch.D. 133, C.A., in which it was held that a riparian owner who had sold land described by measurement and by reference to a plan had conveyed half the adjoining river-bed though the dimensions did not cover it, and the plan excluded it.

As between landlord and tenant, the rule has been applied in giving effect to the expression "adjoining and contiguous." In *Haynes* v. *King* [1893] 3 Ch. 439, it appeared that the plaintiff held four houses, side by side, under leases granted by the Ecclesiastical Commissioners. The leases gave the lessors the right to deal as they thought fit with any premises of theirs adjoining or contiguous to those demised, and to erect or suffer to be erected any buildings, etc., regardless of the effect on the tenant's supply of light and air. The defendant, under the terms of a building agreement with the same landlords, pulled down four small houses on the other side of the road facing those of the plaintiff, and proceeded to erect larger ones which would interfere with the flow of light to the plaintiff's premises. The plaintiff claimed an injunction, but though his lease described his premises as being on the south side of the road in question, and the coloured plan gave the edge of the roadway as the boundary, it was held that, in accordance with the *usque ad medium filum viæ* rule, the two properties were contiguous, even if that word were strictly construed, and that he had no right to light.

As an example of the presumption being rebutted, *Mappin Bros.* v. *Liberty & Co. Ltd.* [1903] 1 Ch. 118 is worth studying. The claim was for trespass. The plaintiff held a fifty-year underlease of a shop in Regent-street, the shops on either side being held by the defendants, and the alleged trespass was the connecting of the two by a tunnel under the street. The plaintiff relied on the *usque ad medium filum* rule (which applies equally whether the party occupying . . . be a freeholder, leaseholder, or copyholder: *Doe d. Pring* v. *Pearsey* (1827), 7 B. & C. 304), and to some extent on the general words of the parcels in the head lease, plus the fact that certain vaults under the street, part of them in front of one of the defendants' properties, had always been occupied with his premises. The general words included: outhouses, buildings, yards, areas, vaults, ways, paths, passages, easements, appurtenances. The defendants' case rested on the words "abutting west of the said street," as far as the actual words of the lease were concerned; but they were also able to rely on the Act of Parliament under which Regent-street was originally laid out by the Commissioners of Woods and Forests, and on the minutes of meetings of that body. From these it appeared that the leases had been granted in 1823 pursuant to building agreements made in 1821, the street having been completed in the interval, and the words of the statute which conferred no express power to dispose of the street, and those of the agreements and the leases, sufficiently negatived an intention to grant any part of the thoroughfare. The defendants alleged in their defence that the pavement was vested in the Crown, whereupon the Attorney-General was added as a defendant; why this plea was raised, or whether the Crown took any proceedings afterwards, does not appear.

The rule has been applied as between landlord and tenant in two cases in which illegal distress was complained of. In *Hodges* v. *Lawrance* (1855), 18 J.P. 347, the landlord so justified the distraining upon goods in a waggon standing on a turnpike road before the door of the demised premises, which were described in the parcels as a "dwelling-house and buildings . . . and 14 acres more (or less) of high land adjoining thereto and the turnpike road from Peterborough to Stilton." This authority was applied in *Gillingham* v. *Guyer* (1867), 16 L.T. 640, in which a cart had been seized as distress for £2 13s. rent owing from a weekly tenant, for whose benefit the landlord had paved the part of the road where the cart was left.

THE HOXTON MARKET MISSION.

The fifty-second annual meeting of the Hoxton Market Christian Mission and Institute was held at Shoreditch Town Hall on Wednesday, 12th October. The treasurer reported that the receipts for the year had totalled £8,501 13s. 10d. The expenditure included £1,461 5s. 6d. for country holidays, camps, etc., £793 0s. 11½d. for relief, food, grants, etc., and £116 19s. 10½d. for clothing and boots. The Mayor of Shoreditch, Alderman W. J. Judge, J.P., distributed Bibles, certificates and medals to winners in various departments of the Mission, and an address was given by Sir Charles Sanders, K.B.E.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Equitable Mortgage by Deposit—Subsequent Legal Charge—Second Mortgage—Sale under Legal Charge—Effect.

Q. 2591. In 1920 A deposited deeds of freehold property with a bank and signed a memorandum of deposit which included the usual undertaking to execute a mortgage when called upon. In 1930 A gave a second charge duly registered as a puisne mortgage to C, and three months later in pursuance of the said undertaking executed a legal charge in favour of the bank. The bank now wish to sell as mortgagees, and it is desired to know whether a purchaser can get a good title from them without C joining.

A. Where a legal estate in fee simple has been mortgaged by way of legal charge and the mortgagee sells under his statutory power the conveyance by him passes the fee simple to the purchaser, subject to any legal mortgage having priority to the mortgage in right of which the sale is made (L.P.A., 1925, s. 88 (1)). The equitable mortgagee, by reason of the possession of the deeds, had first claim, and this position is unchanged by reason of the execution in pursuance of the agreement of the legal charge, as the custody of the deeds remains with the former equitable mortgagee. The sale by the bank (which will be in right of the legal charge) will give the purchaser a clean fee simple as there is no "legal mortgage having priority to the mortgage in right of which the sale is made," and this without any concurrence on the part of C.

Settlement—Death of Life Tenant—Cesser of Settlement—Sole Personal Representative of Life Tenant selling—Receipt—L.P.A., 1925, s. 27 (2), as amended by L.P. (Amend.) A., 1926, Sched.

Q. 2592. A, who died in 1902, by his will devised his real property to B, his wife, for life, and after her death to his trustees on trust for sale. In 1926 the trustees executed a deed vesting the said real property in B as tenant for life. B and C were the then trustees of the settlement created by the will of A. B died in 1932 and her will was proved by C, the sole surviving executor thereof. C is also, since B's death, the sole surviving trustee of the settlement. D has contracted to purchase a part of the property from C, who, not having executed any assent in favour of himself as trustee of the settlement, is selling as personal representative of B. Following the decision in *Re Bridgett and Hayes' Contract* it is conceded that C can validly convey the legal estate in his capacity as personal representative of B, because, as the property ceases to be settled land on B's death, no special grant limited to the said land was necessary. The purchaser's solicitors, however, contend that C cannot by himself give a valid receipt for the purchase money (being capital money), but that a second trustee of A's will should be appointed to join with C in giving a receipt. The vendor's solicitors deny the necessity of this and quote in support s. 27 (2) of the L.P.A., 1925, as amended by the amending Act of 1926. The purchaser's solicitors take their stand on the final words of this sub-section, but the vendor's solicitors say that these words do not affect the words immediately preceding them, which expressly provide that a sole personal representative can give a valid receipt for capital money. Which is right?

A. We do not think that there is any substance in the contention of the purchaser's solicitors. The vendor, the sole personal representative of the late life tenant, although he happens to be a trustee, is not functioning as such, and thus his right as personal representative to give a valid receipt for or direct the application of the purchase money is not affected by L.P.A., 1925, s. 27 (2), as amended by L.P. (Amend.) A., 1926, Sched. In our opinion the concluding words of the sub-section refer only to trustees as distinct from personal representatives.

L.C.A., 1925—Registered Second Mortgage—Sale with concurrence of Second Mortgagee—Cancellation of Entry.

Q. 2593. A has agreed to purchase freehold property and on investigating the title has found that the property (with other property) is comprised in a first mortgage and a subsequent (puisne) mortgage, the latter being registered as a land charge in H.M. Land Registry. The mortgagees under both mortgages will join in the conveyance to A to release the property. Is A entitled to demand the partial cancellation of the land charge in relation to the land conveyed, and, if so, at whose expense?

A. The registration merely gives notice of the charge to future purchasers, under the L.P.A., 1925, and, the title showing that the present purchaser has got in the chargee's interest, the present and any future purchaser will not be prejudiced thereby. We are thus of the opinion that neither the present vendor nor the second mortgagee is bound to clear off the registration in relation to the land now to be conveyed. See "Everyday Points in Practice," Pt. VI, s. 8, case 3, p. 363, and "Further Points in Practice," Pt. VII, A., s. 3, case 2, p. 87.

Freehold Land—Contract for Purchase—Agent's Authority.

Q. 2594. A question has arisen as to the enforceability of a contract for the purchase of certain freehold property. The negotiations for the purchase were carried out on behalf of a lady who wished to acquire same, by a non-professional friend of hers, who bid a sum of £1,000 on her behalf. The vendor however held out for a sum of £1,125, and after some further discussion this offer was accepted on behalf of the lady, by her friend, who signed a memorandum of agreement (prepared by the vendor's agent) over a sixpenny stamp, his signature being followed by the words, in brackets, "instructed by Mrs. Payne" (the lady in question). Upon the latter handing duplicate of the contract (which had been signed by the vendor's agent) to her solicitor, the latter states that he is "unable to approve" same, and advises his client not to proceed with the matter. In subsequent correspondence with the vendor's solicitor the purchaser's solicitor takes up the position that the friend was never authorised to sign a contract, his authority being in fact a telegram directing him to "offer £1,125-50 subject to approval of Contract by Purchaser's Solicitor." Please state whether, in these circumstances, the vendor can hold the lady to her contract, and, if not, whether he has any cause of action against her friend.

A. This appears to be clearly a case in which the agent had only a strictly limited authority, and the principal, unless she had done anything to represent to the vendor that the agent had a more general authority or to ratify the actual contract, is not liable. The agent, however, appears to be liable on a breach of warranty of authority on the principle of *Collen* v. *Wright* (1857), 8 E. & B. 647. The vendor would have to prove damages, which if he could obtain the same price elsewhere would probably be limited to his extra costs incurred.

Obituary.

SIR W. MERCER.

Sir William Hepworth Mercer, formerly Senior Crown Agent of the Colonies, died at Brighton on Friday, the 14th October, at the age of seventy-seven. Sir William was a scholar of Wadham College, Oxford, and entered the Colonial Office in 1879. He was called to the Bar by the Inner Temple in 1879. He became a Crown Agent for the Colonies in 1900, and was Senior Crown Agent just before his retirement in 1921. He was made C.M.G. in 1902, and K.C.M.G. in 1914.

MR. JUSTICE OTTER.

Mr. Justice Otter, of the High Court of Rangoon, died in hospital there on Friday, the 14th October, as the result of a riding accident, at the age of fifty. Born at Ottershaw, Surrey, he was educated at Harrow and University College, Oxford, and was called to the Bar by the Inner Temple in 1905. He was appointed to the Rangoon High Court in 1925.

MR. JUSTICE BANERJEE.

Mr. Justice Lalit Moham Banerjee, of the Allahabad High Court, died on Saturday, the 15th October, at the age of fifty-six. He joined the judicial service in the United Provinces in 1913, and was made Government Advocate in 1921. He officiated as Judge of the High Court of Allahabad in 1925, and was appointed permanently to the Bench the following year.

MR. J. T. PROUD.

Mr. John Thomas Proud, a coroner for the County of Durham, died at Bishop Auckland on Saturday, the 8th October, in his eighty-fourth year. Mr. Proud, who was admitted a solicitor in 1877, retired from practice some years ago. He was one of the oldest coroners in the country.

MR. A. BRETT.

The death occurred recently of Mr. Arthur Brett, solicitor, of Cheadle, North Staffordshire. Mr. Brett, who was admitted a solicitor in 1874, practised as Messrs. Cull and Brett, at Cheadle and Alton, and in partnership with Mr. A. H. Osborne, at Ashbourne, Derbyshire, as Messrs. Cull, Brett & Osborne.

MR. J. H. KITCHEN.

Mr. John Henry Kitchen, solicitor, of Birmingham, died recently at Queen's Hospital, Birmingham. Mr. Kitchen, who was born at Whitehaven, Cumberland, went to Birmingham about thirty years ago. He was admitted a solicitor in 1910, and became managing clerk to the firm of Messrs. Goodrich, Clarke & Smith. He started to practise in Birmingham on his own account in Waterloo-street, and later removed to Paradise-street.

MR. W. A. KEY.

Mr. W. A. Key, solicitor, second son of the late Dr. Andrew Key, of Montrose, died recently at Aberdeen, at the age of sixty-three. He qualified as a solicitor in Edinburgh, and later went into business in Montrose.

MR. J. D. F. YUILL.

Mr. John D. F. Yuill, solicitor, partner in the firm of Messrs. Yuill & Kyle, of Glasgow, died in a Glasgow nursing home on Sunday, the 9th October, at the age of sixty-four. He had been the Clerk to the Deacon's Court of Battlefield East Church for thirty-four years.

[An error which occurred in the obituary notice of the late Master Archibald Keen in the issue of the 27th August has been brought to our notice by the Master Chandler.

He points out that his late colleague was never President of The Law Society, but that he was the son of Grinham Keen, who was President in 1889.—ED., *Sol. J.*]

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

By the time Nicholas Bubbewith became Master of the Rolls in 1402, the office had already assumed the character of a sort of Vice-Chancellorship, though it still differed in degree rather than kind from that of a Master in Chancery. For some time, the occupation of Henry III's "House of Converts" (on the site of the Record Office in Chancery Lane) and with it a general superintendence over converted Jews had been attached to the office. But by this period there were few Jews to look after, for King Henry's pious interest in their souls had been followed by the less other-worldly interest which his successors took in their savings. In 1378, Parliament had confirmed a previous grant of this house to the Masters of the Rolls, and in 1388 they had been assigned a place above the judges. Such was the office which Bubbewith held from 1402 to 1405. After his resignation, he had a distinguished ecclesiastical career, becoming Bishop of London in 1406, of Salisbury in 1407, and of Bath and Wells in 1408. In 1414 he went to Rome to help to settle a dispute between three candidates for the Papacy which Martin V finally secured. While he was in Italy, he undertook a translation of Dante. He died on the 27th October 1424 and was buried at Wells.

KINDNESS IN JURIES.

During a recent address on "Jurors' Duties," Mr. Macbeth, the Salford Stipendiary Magistrate, had somewhat to say about the verdict of suicide while temporarily insane, which, in spite of the resentment sometimes evinced by relations, was, he thought, kinder than a verdict of self murder. Still, the milk of human kindness is rather an uncertain ingredient in a judicial decision. There was once a case of a man who died from taking prussic acid. The coroner's jury said *felo de se*, and the company with whom the life of the deceased was insured refused to pay. An action was brought at which the jury were unanimous for suicide while of unsound mind. This being agreed, the foreman said: "It doesn't matter in the least to the insurance company whether we find the deceased committed suicide while of unsound mind or died by accident. The company loses either way." "But what about the evidence?" objected a conscientious juror. "We were sworn to give a verdict according to the evidence." "Hang the evidence!" replied the foreman. "Think of those two sisters of his. They won't like a verdict of insanity against their brother, especially as they've got children of their own. Why not let's be kind? It won't hurt anybody." And so it was.

A CLERICAL PRESUMPTION.

The last scene of a rather dismal ecclesiastical comedy was reached when the Privy Council dismissed the appeal of the Rector of Stiffkey. The evidence on which the case turned recalls a rather amusing point from the old canon lawyers according to whom if a clergyman is found embracing a woman in some secret place this does not, as in the case of ordinary people, prove adultery for "he is not presumed to do it on the account of adultery but rather on the score of giving his benediction or exhorting her to penance." A commentator, however, observes that "few judges in modern times would yield so much to clerical virtue as this application of the principle implies," and so indeed it has proved.

THE JUDGES' MARCH PAST.

Gold and scarlet, silk and ermine and horsehair combine to offer the layman's eye an annual feast when the legal year opens. Centuries have gone to the building up of this spectacle. The S.S. collar of the Lord Chief Justice has an origin so obscure that some authorities say it commemorates Saint Simplicius, a Roman senator martyred under Diocletian. The purple of the County Court judges was introduced within

the lifetime of the youngest barrister. The occasion evokes at least one humorous memory. When Charles II made the Earl of Shaftesbury his Chancellor, that dashing cavalry officer played a practical joke on the profession by making the annual procession a mounted one. Very amusing it must have been to him to display his horsemanship and watch the discomfort of a crowd of learned gentlemen more used to the Bench than the saddle. Actually the joke went too far, for Mr. Justice Twisden lost all control of his mount and was well and truly thrown.

Correspondence.

Concurrent Mortgage Terms.

Sir,—May I venture to suggest that your answer to Q. 2553, as published in your issue of the 3rd September, is not correct.

I think that the general view is that the length of the demise granted by a mortgage is immaterial so long as it will last long enough for the debt to be paid off before the term expires. And as regards second, third and further mortgages, it is not necessary that there should be "overlap," as would appear to be suggested by your answer. See L.P.A., 1925, ss. 1 (5) and 149 (5).

Suppose D in your question and answer had found, when he registered his mortgage, that C had not registered his mortgage; would not D have priority over C?

If Greenacre were mortgaged to A with deeds, then to B, puisne mortgage, for 3,000 years, and then to C for 2,000 years, would not the priority as between B and C depend entirely on the dates of registration of B's and C's mortgages and be entirely independent of the length of their terms of years? An affirmative answer is to be gathered from the usual text books, including "Emmet" and the "Encyclopædia of Forms and Precedents."

Is not the principle of the modern law that the term of years granted by a mortgage (legal) is a mere peg on which are hung a variety of powers? There is nowhere in the Acts any statement that the validity of later mortgages depends on their overlapping, and the two sub-sections I have mentioned above appear to show that overlapping is not required. There is an example in one of the abstracts given in the Schedules to the Act, where the first mortgage is for 1,000 years, a second mortgage for 2,000 years, and a third for 3,000 years; but this is only illustrative, and was perhaps intended to start a custom of making first, second and third mortgages of those lengths so that they could be so recognised. But it is clearly not in any way binding.

As a matter of fact, in your question No. 2553, the second and third mortgages do overlap although all are for 3,000 years.

If the principles which I have tried to state above are not correct, then I think many of your readers would be glad if you would deal with this question in your "Conveyancer's Diary."

Seaton. R. A.
10th September.

Expense of Poor Persons' Appeals.

Sir,—On a person applying for an appeal to the House of Lords substantial expenditure may be necessary, especially for printing, but a poor persons procedure does not seem to assist.

We shall be glad to hear if any of your subscribers have had experience as it is interesting from the point that a poor person may be denied justice for failure of provision of this nature.

Soho-square, W.1. A. E. Hamlin, Brown & Co.
14th October.

The Law Society at Bristol.

ANNUAL PROVINCIAL MEETING.

[By our Special Representative.]

(*Continued from p.* 723.)

Mr. R. M. Williamson, LL.B. (Edin.), (Advocate, Aberdeen), read the following paper:—

Some Recent Examples of England Borrowing from the Law of Scotland.

At the dinner in the Guildhall to commemorate the centenary of The Law Society I found myself surrounded by English solicitors who, apart from the real business of the gathering, appeared to be mainly concerned with two things, first, the fact that many of them found it necessary, or at least expedient, to attend classes for instruction in the new law of real property which Lord Birkenhead had imposed upon them, and, second, the new duty of further enabling the poor to prosecute litigation. I had considerable sympathy with the first, because, though we in Scotland have had real property statutes forced upon us at intervals extending over about a century, which modified and usually simplified the law of real property, the changes have been gradual, and the fabric of our feudal conveyancing has never been shattered, as the law of real property in England appears to have been.

The Care for the Poor in Scotland in Litigation.

With regard to the second, however, my friends seemed to receive with a considerable degree of incredulity my assurance that in Scotland for 500 years the profession has been obliged to conduct the causes of the poor under the authority of a statute of the Scottish Parliament in 1424 which reads as follows:—

> ". . . gif thar be ony pur creatur that for defalt of cunnyng or dispense can nocht or may nocht folow his cause the king for the lufe of god sall ordaine that the Juge befor quham the cause suld be determyt purvay and get a lele and a wyse advocate to folow sic pur creaturis cause. And gif sic cause be obtenyt the wrangar sall assyth bath the party scathit and the advocatis costis and travale . . ."

I do not profess to be an authority on the old Scottish language, which to the regret of some people, mostly perfervid Scots living in London and in Canada, is dying out, but I think the old statute may be translated as follows:—

> "If there be any poor creature that for lack of wisdom or means cannot follow his cause, the King for the love of God shall ordain that the judge before whom the cause shall come shall provide and supply a good and a wise advocate to follow such poor creature's cause. And if such cause be successful, the wrongdoer shall pay both the party injured and the advocate's costs and efforts."

This is not the time to enter into detail on the working out of the statute, but I may say that in the Supreme Court the Faculty of Advocates—the Scottish Bar—appoints each year six of its members to be counsel for the poor, and the solicitors appoint certain of their number to act as solicitors for the poor, and both bodies appoint certain others to be reporters on the *probabilis causa* of those who apply to be admitted as poor litigants, for not only must the poverty of the intending litigant be proved, but he must be found to have a probable cause. In the same way in the Sheriff Court—which approximates to your county court, but has a much wider jurisdiction—a certain number of solicitors for the poor in each district are appointed by the sheriff following on a selection made by the solicitors practising in the district. Should there be a contest, a vote is taken on the names to be submitted to the sheriff, but in practice, unless anyone desires not to be elected, the names are the names of those who have been longest on the roll of practising solicitors in the district without having formerly acted for those on the poors roll. The solicitors chosen in the Sheriff Court form the body to report on the *probabilis causa* of the intending litigant. The person against whom it is proposed to bring the proceedings is called before the reporters, and he may be able to show either that the applicant is not a fit person to go on the roll because he has means to enable him to sue in the ordinary way, or that the action is frivolous or barred. In the case of either objection being sustained, the reporters refuse the application, and, while there is a right of appeal against their decision, the court in practice very rarely interferes with it. In most districts those appointed are members who have been only a few years in practice, and the appointment introduces them to work of a miscellaneous kind, both civil and criminal.

When a litigant is admitted to the poors roll, he is entitled to have his case conducted by counsel and solicitor without either paying them any remuneration or paying any of the ordinary court dues. Moreover, the solicitor for a pauper litigant is liable in damages to the litigant if he should be guilty

of negligence in conducting the case, just as if he had been solicitor for an ordinary litigant.

If the poor litigant should be successful and obtain costs against the other side, then his solicitor, and counsel if he has one, are entitled to recover the usual costs from the other side, including, in that event, court dues which have then to be accounted for to the court. Those appointed to represent the poor have not only to act for them in civil causes, but have also to defend them when charged with criminal offences.

The burden placed upon counsel and solicitors is readily borne. It usually comes to them early in their professional career at a time when other business may be scanty. In most cases, nothing is recovered, but as a rule, each solicitor for the poor during his year of office has a few cases in which he recovers remuneration from the other side, so that he usually is in pocket at the end of the year. The whole system works satisfactorily and smoothly. The profession in Scotland regards the care of the poor in litigation as being as inevitable as the payment of the attorney licence.

Legitimation *per subsequens matrimonium*.

It has always been the common law in Scotland—and, I believe, in all Christian Europe, with the single exception of England—that the subsequent marriage of the parents of a child born out of wedlock renders the child legitimate. England did not introduce the rule till 1926, when the Legitimacy Act of that year was passed. It provides that the legitimation of such children is not to prejudice the rights of children of either parent already legitimate, and, further, that if either parent was married at the date of the birth of the child, such child is to be excluded from the application of the rule. The two exceptions I have mentioned always applied in Scotland, though perhaps "conception" should be substituted for "birth."

Equality of Spouses in Divorce.

Ever since the Reformation in 1560, the Scottish Courts have been in the habit of dissolving marriages on the ground of the misconduct of either spouse, and at all times both spouses have been treated with absolute equality. The Scottish rule was introduced into England by the Matrimonial Causes Act, 1923.

The Parliament of Scotland was far from being a representative assembly. It was, indeed, much less representative than was the Parliament at Westminster before 1832. The best evidence of that is the fact that some English boroughs, such as Westminster, sent to the poll at an election a larger number of voters than did the whole of Scotland. But, notwithstanding its unrepresentative character, perhaps just because of it, the Scottish Parliament before the union in 1707 had done much useful work. It had established a complete and universal system of public instruction; provided, as we have seen, for the protection of the poor when litigating with the rich; laid the foundation of a system of banking; afforded a humane relief to insolvent debtors; given security to cultivators of the soil in the enjoyment of their leases; established a universal system of registration of all titles and mortgages relative to real property; and brought inexpensive justice home to every man's door by a system of local courts. It followed, therefore, that in the century and a quarter between the union of the Parliaments and the Reform Act of 1832, Scotland stood in little need of constructive legislation from the Parliament at Westminster, and, in consequence, the Scottish members were able to unite together and to form a compact party whose policy it was to support the Government of the day in return for gifts of office, and to keep Scotland's contribution to imperial taxation as low as possible. It is on record that one of the oldest Scottish members at Westminster thus summed up the results of his political experience for the benefit of his younger brethren:—

> "I was never present at any debate I could avoid, or absent from any division I could get at. I have heard many arguments which convinced my judgment, but never one which influenced my vote. I never voted but once according to my own opinions, and that was the worst vote I ever gave."

But this reference to the Parliament of Scotland has led me to wander from my subject, to which I must now return for the purpose of inquiring whether, in addition to the instances I have given of some rules of the law of Scotland which have been recently introduced into England, there may not be others which might with advantage receive consideration.

It has to be borne in mind, as has lately been pointed out by that distinguished Scottish lawyer Lord Macmillan, in his presidential address to the International Congress of Comparative Law at the Hague in August last, that, when the law of Scotland was taking shape, that country was in closer contact with France and the Netherlands than with England, for causes known to us all, but which happily have long since ceased to be operative.

Divorce for Desertion and Recrimination.

(A) The Scottish Parliament in 1573 passed an Act allowing divorce on the ground of wilful desertion for four years. The desertion must have been without reasonable cause, and the innocent spouse must have been willing throughout the period to resume co-habitation.

(B) The English rule of granting divorce where one of the spouses has been guilty of misconduct, but of refusing it where both have been guilty—unless the judge exercises a discretion on cause shown—has always appeared to us in Scotland to be illogical. With us, the fact that the plaintiff has been guilty of misconduct is no reason for refusing decree, and cross-actions of divorce are not uncommon, and both are often successful. Surely, if divorce is to be granted at all, the fact that both spouses have failed to keep the compact should be an additional cause for granting relief, not a reason for refusing it.

Miscellaneous Points.

There are other cases to which reference may be made. Mr. Eric Chapman, the well-known metropolitan magistrate, published a book a few weeks ago in which he advocated making the prosecution of all crime the business of the State, instead of leaving the great majority of prosecutions to private persons, and he cited in support of his argument the practice in Switzerland. He might have cited Scotland, for with us, with the exception of certain trifling offences, such as breaches of the game laws, all criminal prosecutions are by the State. If it be true that all crime should be punished, is it not better that the decision to investigate it should be the business of a public officer than that it should be left to a private citizen, who may have numerous reasons for refusing to prosecute? Lord Bowen once said: "Although the desire to vindicate public justice is an excellent quality, it is, in my experience, a somewhat rare one."

Moreover, some people think that your preliminary public inquiries preceding a trial for murder, for example, what Lord Macmillan calls "dress rehearsals," cannot make for good. I fancy I am on delicate ground if I refer to the coroner's inquest, for I suppose the coroner is one of the oldest officers. No doubt, once in a blue moon, the publication of the inquiry before the coroner may result in the arrest of a murderer who would otherwise escape, but if, on the other hand, account is taken of the sum total of human anguish which such public inquiries cause—I have in mind particularly suicides—it may well be doubted on which side is the credit balance. Moreover, in these days of an enterprising and sometimes hysterical press, when the proceedings before the coroner and the magistrate are fully and widely published, is it possible, human nature being what it is, that the members of the jury can come to their task with perfectly open minds, be they ever so anxious to do so?

The law of trusts is, I believe, for the most part, now common to both countries, but we have in Scotland a provision which is found to be exceedingly useful, namely, that a majority of trustees is a quorum of their number, and that a quorum may perform all acts as effectively as the whole body. We all know too well that occasionally a trustee is found who opposes almost every step his co-trustees may wish to take, and the consequent loss to the estate is sometimes considerable.

There is one rule of the law of Scotland which is often referred to in England, more often perhaps than any other, because its application, if introduced, would be very wide. I mean the right of the widow and children of a man domiciled in Scotland to take on his death a certain portion of his estate, will or no will. Much can be said on both sides of this thorny topic. A Parliamentary Committee quite lately considered the subject and reported against introducing any such provision into the law of England. Perhaps the committee's report was all for the best, particularly in view of the fact that the right in Scotland may be rendered of little or no avail by the testator placing his estate in certain kinds of investments.

I need scarcely say that my object has not been to hold up the law of Scotland as perfect, or to suggest that it might not be improved in some particulars by borrowing from the law of England. My sole object has been to note a few cases where in recent years the law of England has borrowed from that of Scotland, and to suggest that there may be others worth consideration.

Mr. E. A. Bell (London) referred to several points in Scottish law which Mr. Williamson had not mentioned: among them the fact that in Scotland specific performance could be claimed for a promise made without monetary consideration, and also that the owner of stolen property might advertise for its return with "no questions asked."

Miss L. M. Thomas (London) urged the Society to ensure the amendment of the law relating to testamentary disposition. The Bill recently introduced by Miss Rathbone had been a step in the right direction: it had entitled the surviving spouse

to half the personal chattels plus £1,000, with half the remaining income if there were no children; one-third if there were children; and two-thirds if there were children requiring maintenance. England was the only civilised country in which it was still possible for a woman who had given up her chosen career for marriage to find, after many years of devoted service, that she was penniless and that what should have been her pension was being enjoyed by a stranger.

Mr. BARRY O'BRIEN (London) said that the system of marriage by declaration and the verdict of not proven were two points in which Scottish law might advisably be amended.

Miss CARRIE MORRISON (Mrs. Appelbe) (London), speaking as a Scottish married woman, hoped that legislation introduced to amend testamentary disposition would be fair to men as well as to women. The wife might be richer than the husband, and he ought to inherit on the same basis as the wife.

Mr. WILLIAMSON, in reply, explained that Scottish marriage by declaration had to be made in the presence of two witnesses known to the parties who would declare before the appropriate officer that the parties were in their sound and sober senses, and that one party must have been resident in Scotland for a period of twenty-one days. The not proven verdict was very rarely found; Lord Dunedin had never heard it during his whole time as Lord Advocate. It was possible so to invest an estate that the right of the widow and children to inherit became of little avail.

Mr. W. W. GIBSON (Newcastle) asked if it were true that the body of a person who had died on a north-bound train was never disembarked until it had crossed the border.

Mr. WILLIAMSON, in reply, said that he had never heard of this, but it might be so.

Mr. B. A. WORTLEY, LL.B. (Mirfield, and of the Law Department, the London School of Economics and Political Science, London University), read the following paper :—

THE SOLICITOR'S RIGHT OF AUDIENCE.

INTRODUCTION.

It is not an easy thing to explain English legal institutions to Englishmen. It is even less easy to explain our institutions to foreigners unacquainted with our legal history. When one is asked to translate the word "solicitor," into French, it is soon found that there is no exact equivalent and it is usually necessary to retain the English word and to explain its meaning by saying that the English solicitor combines most of the functions of the French *avoué* and *notaire*, with this difference, that the solicitor has a right of audience as advocate in certain courts, and is to that extent the equivalent of the French *avocat*. This paper is a short attempt to explain and expound the solicitor's right of audience as its exists to-day.

GENERAL PRINCIPLE.

It is axiomatic that our English Courts exist to provide justice. For centuries our judges have been remarkable for their judicial integrity and for the confidence reposed in them by the nations. This being so, the general principle of common law, laid down by Littledale, J., in *Collier* v. *Hicks* (1831), 2 B. & Ad. 663, "that every Court of Justice has the power of regulating its own proceedings," will surprise no one.

This principle was further elaborated by Parke, J., in the same case, in these words, "no person has a right to act as an advocate without the leave of the court, which must of necessity have the power of regulating its own proceedings *in all cases where they are not already regulated by ancient usage*."

It follows, therefore, that a solicitor's right to audience may arise first, by virtue of the court exercising its discretion in any case in accordance with its right to govern its own affairs with a view to securing the maximum of human justice; secondly, it may arise by ancient usage or custom of the court, and of course, thirdly, it may arise by reason of some special Act of Parliament or other legislation.

(A) *The Solicitor's Audience by Discretion of the Court.*

Let us first examine the right of audience which is granted by virtue of the general principle just enunciated. Once more we turn to the case of *Collier* v. *Hicks*, in which Littledale, J., said, "in the Superior Courts in Westminster Hall when barristers attend, they only are permitted to act as advocates. *Perhaps if they did not attend, attorneys might be heard as advocates.*" This suggestion was discussed in the case of *Butterworth* v. *Butterworth & Queenan*, 57 SOL. J. 266, tried in the Probate, Divorce and Admiralty Division by Sir Samuel Evans, P. In this case both solicitor and counsel were absent and the report read as follows: "the learned President himself proceeded to examine the petitioner and two of his witnesses. On the arrival later of the petitioner's solicitor's clerk, counsel being still absent, the President inquired whether he were a qualified solicitor and received an answer in the negative. The President then said that if he had been a qualified solicitor he would have granted him a right of audience."

This novel attitude seems clearly to have been dictated by a desire to promote justice rather than by any previous usage or custom.

(B) *The Solicitor's Audience by Usage and by Legislation.*

It will be convenient to deal first with the general position as enunciated by s. 44 of the Solicitors' Act, 1932, which re-states, in very general terms, the existing law with regard to a solicitor's rights to practise and to be heard in the courts. Section 44 runs as follows :—

> "Every person so qualified as aforesaid [i.e., as a solicitor on the roll holding a current certificate] may practise as a solicitor—
>
> "(i) in the Supreme Court; and
>
> "(ii) upon signing the roll of solicitors of any inferior court of law or equity which keeps such a roll (but without payment of any fee) in that court; and
>
> "(iii) in all courts and before all persons having jurisdiction in matters ecclesiastical; and
>
> "(iv) in all matters relating to applications to obtain notarial faculties;
>
> and shall be entitled to all the rights and privileges, and may exercise and perform all the powers and duties formerly appertaining to the office or profession of a proctor in the provincial, diocesan or other jurisdictions in England:
>
> "Provided that nothing in this Act shall affect the provisions of section 120 of the Supreme Court of Judicature Consolidation Act, 1925, or section 41 or section 72 of the County Courts Act, 1888, or any other enactment in force at the commencement of this Act and restricting the right of any solicitor to practise as such in any court."

Section 120 of the Judicature Act and s. 41 of the County Courts Act merely enact that officers employed in those courts are not to act as solicitors therein: s. 72 of the County Courts Act gives solicitors a limited right of audience in the county court, which will be discussed in detail further on.

For the sake of completeness it may be noted that by an Order in Council of 1896, London solicitors are entitled to practise before the Privy Council on signing a declaration and without fee; country solicitors may be admitted to practise by petition to the Privy Council, subject to such conditions as their lordships may direct ("Bentwich Privy Council Practice," pp. 369 and 370); and by s. 27 of 6 & 7 Vict. c. 73, solicitors may practise in the Chancery Court of the County Palatine on payment of a fee.

It will be observed that Parliament does not define the word "practise," but s. 44 (2) of the Solicitors Act, 1932, reads as follows :—

> "Nothing in this Act shall prejudice or affect any right of practising or *being heard* in, before or by any court, tribunal or other body which immediately before the commencement of this Act was enjoyed by virtue of any enactment, rule, order or regulation or by custom or otherwise by persons qualified to act as solicitors."

It seems reasonable to infer from this sub-section that there is a distinction between the right to practise in a court and the right to be heard in a court. Unfortunately, the Act does not elaborate this distinction, and in order to find out what the right to practise comprehends, and to know what rights a solicitor has to be heard in a court, we are thrown back on our knowledge of the existing law and custom. For the purposes of exposition it is proposed to treat of the solicitor's right to audience under two heads: first, his right to be heard in a court otherwise than as a "trial advocate," and secondly, his right to be heard in a court as a "trial advocate."

(A) *Audience otherwise than as a Trial Advocate.*

The right to practise in the Supreme Court carries with it a right to be heard in connection with such practice and is regulated by the following rules and orders.

Order 55, r. 1A, of the R.S.C. is as follows: "In any proceeding before a judge in chambers, any party may, if he so desire, be represented by counsel," but this must be read with Order 65, r. 27 (16), which provides: "As to counsel attending at judge's chambers, no costs thereof shall in any case be allowed unless the judge certifies it to be a proper case for counsel to attend." The implication is that solicitors are normally the proper persons to be heard in these proceedings, and as a matter of practice their managing clerks are also heard: see *Vimbos* v. *Meadowcroft* (1901), 46 SOL. J. 2. It is not necessary to draw attention to the multiplicity and variety of proceedings in chambers; suffice it to say that attendance in chambers often involves some advocacy and examination of witnesses. Order 56, r. 7, dealing with attendance before Admiralty Registrars, also implies that solicitors are usually heard by such registrars. Similarly,

No. 22 of the Directions for Agents (1923) states that counsel are not to be heard before the Appeal Committee of the House of Lords. By custom the solicitor's right to practise in the Court of Chancery of the County Palatine of Durham and the Palatine Court of Lancaster, in the county courts and the Mayor's Court in London, carries the right to appear in the chambers of those courts.

(B) *Audience as a "Trial Advocate."*

We now come to the more important part of this paper dealing with the solicitor's right of audience as an advocate in the popular sense of the word.

Leaving aside the exceptional case already mentioned where a solicitor may be called upon to act as advocate by the High Court in the exercise of its right to regulate its own proceedings, it will be convenient to deal with the solicitor's right to appear as "trial advocate" as it arises (I) from custom or usage, and (II) from specific legislation.

(I) *Rights arising from Custom or Usage.*

(i) It is submitted by a learned contributor to "Halsbury's Laws of England" (vol. 26, p. 724) that as there is no statute or rule of court prohibiting solicitors from appearing before official referees, their right to appear must be presumed. On general principles it might be safer to say that this right is in the discretion of the referee.

(ii) There is a curious survival of a custom giving the solicitor an equal right of audience with counsel in the Worcester Court of Pleas, although the present Town Clerk of Worcester, Mr. C. H. Digby-Seymour, informs us that this court is held very infrequently, and that he is unable to recollect any instance in which solicitors have exercised their right to plead. This right was, however, confirmed as late as in 1894 (see *The Law Journal* for 1894, p. 17).

(iii) It is the practice of coroners to allow both solicitors and counsel to attend before them and to examine and cross-examine witnesses, but apparently coroners have a right to exclude any advocate: "the power of exclusion is necessary to the due administration of justice," said Tenterden, C.J., in *Garnett* v. *Farrand*, 6 B. & C. 628.

(iv) Similarly, although magistrates do in fact allow solicitors and counsel to appear in preliminary inquiries before them, neither solicitor nor counsel has an absolute right so to attend. One of the reasons which induced the court in *Cox* v. *Coleridge*, 1 B. & C. 37, to insist on the court's right of excluding solicitors and counsel given by Abbot, C.J., at p. 49, makes curious reading. He said, "if an attorney has a right to attend where one out of a gang is examined, he may obtain and convey information to the rest; the effect of which might be to frustrate the justice of the case." This ruling was repeated by the Lord Chief Justice in *Rex* v. *Borron*, 3 B. & C. 432, who said, "an attorney has no right even to be present at such an enquiry [i.e., before the magistrates]. The presence of an attorney on such occasions, is often permitted, as a matter of courtesy . . . "

(v) It would seem that, "before committees on private bills solicitors have often been heard without objection" ("Erskine-May's Parliamentary Practice," 1924, p. 783), but that on other occasions Parliamentary Committees have declined to hear a solicitor until he has become a parliamentary agent.

(vi) In "Halsbury's Laws of England" is the statement (vol. 26, p. 725) that, "solicitors are sometimes allowed to examine and cross-examine witnesses at an enquiry held under a Parliamentary Commission, but it does not appear that they have any right to do so." In this connection is cited the *Belfast Riots Commission Case*, in which counsel were emphatically refused an absolute right to examine witnesses, a refusal which led to an almost complete withdrawal of the solicitors and counsel engaged to appear before the commission.

(vii) It is also stated in "Halsbury" that solicitors may appear before a revising barrister.

(viii) Experience shows that solicitors are commonly heard in private arbitrations.

(ix) We now come to the most difficult topic under this head—the solicitor's right to appear at quarter sessions. The general rule in this matter was laid down in an *obiter dictum* of Lord Tenterden, C.J., at p. 669, in *Collier* v. *Hicks*, 2 B. & Ad. 663, in these words: "At quarter sessions the justices usually require that gentlemen of the Bar only should appear as advocates; but in remote places, where they do not attend, members of the other branch of the profession are permitted to act as advocates. Persons not in the legal profession are not allowed to practise as advocates in any of these courts." This case was referred to in *Ex parte Evans* (1846), 9 Q.B. 279, where the Quarter Sessions for Denbighshire had ordered "that the request of the barristers for exclusive audience be granted at all times when four barristers are present." In this case the Solicitor-General moved on behalf of a local attorney to quash the justices' order on the ground that, previous to its being made, no barristers had ever attended or practised at those sessions except upon a special retainer, and that attorneys and solicitors had had at all times rights of audience there and had derived therefrom certain emoluments. Giving judgment in this case, Lord Denman, C.J., said: "It is an important rule that, in this as in other respects, all courts should have power to regulate their own practice. The exception mentioned by Parke, J. [where an ancient usage had settled a court's practice], does not reach the present case, but only those in which, by usage, some privilege is given to particular persons exclusively. And any more general argument would apply, not in behalf of attorneys only, but of other persons *who would attend at a lower charge even than attorneys* . . . we ought not to interfere with a discretion which we have no doubt has been soundly exercised."

The point seems next to have been raised in *Bott's Case* (1889), 42 L.J.N. 28, where exclusive audience at certain quarter sessions had been given to barristers, and at the opening day of the sessions in question there were only three prisoners and three counsel in court. Bott, a solicitor, informed the court that he was instructed to appear for a prisoner and submitted that no rule was valid limiting audience to less than four barristers. To this claim the recorder replied that the order in question was for each separate session: the sessions had power to place any limitation it pleased for limited audience or general audience, as the case may be, and he would not interfere with the existing rule. The solicitor could not insist on being heard in face of the rule in question.

Following this case, a learned writer in the *Law Journal*, aptly summarised the position of solicitors at quarter sessions in these words: "The right of a court of quarter sessions to restrict audience to members of the Bar is as plain as the right of solicitors to audience if no such restriction is made, in which case barristers and solicitors are treated alike, except that if a solicitor and a barrister rise together, the solicitor must give way. Where there is no rule of court giving barristers exclusive audience, the right of pre-audience exists at common law, and does not extend to the trial of indictments which, unless there is a general rule of the court in regard to them, or a special direction in a particular case, must be tried in the order in which true bills are found by the grand jury . . . "

"Where the condition [as to the number of barristers to attend to give them exclusive audience] exists, if the Bar do not muster strong enough at the opening of the court, in court or within its precincts, solicitors have at once audience, and so if no such condition exist and no barrister attend. If no such condition exist [and barristers have been given an exclusive right of audience unconditionally (*inserted by writer*)] and only one barrister attend, he is entitled to be in every case not defended and prosecuted in person, but the court may allow a solicitor to prosecute or defend him in each case."

This seems to be the logical application of the principle laid down at the beginning of this paper. In 1921, however, when only one counsel appeared at a certain quarter sessions the court adopted the novel procedure of adjourning. The *Law Journal* for that year, at p. 168, gives the following account of this: "Last quarter sessions only one counsel attended and as he was briefed for the prosecution, his defendant, though desirous of a barrister's services, got none, and the case was properly adjourned. But where were the solicitors? Beyond all question, in such a forensic dearth, audience may be and ought to be accorded to them in any court . . . the Bar cannot expect to retain its monopoly of audience unless there is normally the certainty of their being adequately represented."

In concluding this part of the paper, it may be said that where solicitors have a right of audience as advocates by custom or usage, such right has grown up to meet local requirements and exigencies and has been accorded by the tribunal concerned in exercise of its right to regulate its own proceedings in the interest of justice.

(II) *Rights arising from Legislation.*

It is proposed first to submit a group of miscellaneous statutes, rules and orders that give a solicitor a right of audience as trial advocate, and then to deal with the rights exercisable by a solicitor as advocate in the courts of summary jurisdiction, in the county courts and in bankruptcy matters.

(i) First on the list is the right to appear before the statutory committee of The Law Society. Rule 20 of the Solicitors Act (Disciplinary) Rules made under s. 6 (1) of the Solicitors Act, 1932, provides that the Committee of The Law Society may at any stage of the proceedings before it "appoint a solicitor to represent the applicant . . . " Apart from this, the question of audience is left to be dealt with in the instructions prepared by The Law Society with a view to assisting persons taking proceedings before the committee. Although

these instructions "must not be taken in any sense as qualifying the rules," they indicate the practice of the committee to be as follows: "At the hearing either party may appear in person, or by counsel, or by solicitor. The committee will not hear a solicitor's clerk, or any other agent."

The writer is informed that the committee would never hear a clerk, whether qualified or otherwise; although the instructions may appear to leave the point open. Other rules made under the Solicitors Act, 1932, allow a solicitor to appear before the Master of the Rolls in applications for admission and for practising certificates.

Next come a number of statutes which properly permit a solicitor, as a man of affairs, to have a right of audience in matters of a business character.

(ii) The Finance Act, 1898, provides by s. 16 that ". . . . it shall be lawful for the General Commissioners [of income tax and house duties] to permit any barrister or solicitor to plead before them on any appeal for the appellant or officers either *viva voce* or by writing."

This, of course, is merely permissive, and does not confer an absolute right for solicitor or counsel to be heard. The Commissioners may regulate their own affairs in each case.

(iii) The Railway and Canal Traffic Act, 1888, provides by s. 50 that: "In any proceedings under this Act any party may appear before the Commissioners either by himself in person or by counsel or solicitor."

This would appear to give a definite right of audience before this tribunal, which still retains the power to determine a dispute "involving any toll, or rate, or portion of a toll, rate or charge. (Leslie's "Transport by Railway," 2nd ed., p. 325.)

(iv) Following the last-mentioned Act, the Railways Act, 1921, by s. 22, provides that the Railway Rates Tribunal may, subject to certain approvals, make rules for procedure and practice, including the right of audience before the tribunal, " . . . provided that any party shall be entitled to be heard in person or by a representative in the employment of the party duly authorised in writing or by counsel or solicitor."

(v) The Rating and Valuation Act, 1925, provides by s. 32 (8) thereof that: "On the hearing of an appeal by a Committee of Quarter Sessions under this section, any party to the appeal may, if the rateable value of the hereditament to which the appeal relates as appearing in the Valuation List does not exceed £100, appear by solicitor instead of in person or by counsel."

The editor of Halsbury's Statutes, vol. xiv, at p. 661, points out that this section does not apply where the appeal is to a recorder.

(vi) *The Tribunals of Inquiry (Evidence) Act*, 1921, provides for the formation of tribunals on resolution of both Houses of Parliament, "for inquiring into a definite matter described in the resolution as of urgent public importance," and s. 2 (*b*) of this Act provides that such a tribunal "shall have power to authorise the representation before them of any person appearing to them to be interested by counsel or solicitor or otherwise, or to refuse to allow such representation."

(vii) A solicitor is also given a right of audience by the Public Worship Regulation Act, 1874. Section 11 of this Act states that, "in any proceedings under this Act (i.e., proceedings in respect of the regulation of public worship) either party may appear either by himself in person or by counsel or by any proctor, attorney or solicitor."

This would seem to give a party an absolute right to a solicitor's services.

(viii) No. 6 of the Escheat Procedure Rules, 1889, gives a solicitor a right of audience before the Escheat Commissioners in these words—

> "The Commissioners shall *permit* every person to give evidence, and shall *permit* any person claiming or setting up any title to the real estate therein (i.e., to be escheated), to be heard, and to cross-examine any witness by himself or his attorney or counsel."

This again would seem to give an absolute right of audience to a solicitor.

(ix) Turning now to the solicitor's right of audience in connection with the summary trial of offences before magistrates, we find that the Summary Jurisdiction Act, 1848, s. 12, provides that, "Every such [summary] complaint and information shall be heard, tried and determined by one or two more justice or justices of the peace . . . and the party against whom such complaint is made or information laid shall be admitted to make his full answer and defence thereto and to have witnesses examined and cross-examined by counsel or attorney on his behalf; and every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively and to have the witnesses examined and cross-examined by counsel or attorney on his behalf."

It will be noticed that in these summary cases counsel or solicitor is given an absolute right of audience at the request of his client, as distinct from a purely discretionary right of audience such as that accorded to him by custom in preliminary magisterial inquiries.

Section 12 of the Summary Jurisdiction Act, 1848, was examined in the case of *R.* v. *Thompson* [1909] 2 K.B. 614. In that case Jelf, J., is reported to have said: "there is no power to subpœna a defendant to an information as a witness, for it is contrary to the law that he should be compelled to give evidence against his will . . . it requires very plain language to justify taking away a man's liberty," and his Lordship ruled that appearance by an advocate is enough to prevent the issue of a warrant for non-appearance to a summons. The extreme utility of such a right to appear by proxy, for example, in the case of a trivial motoring offence, needs no elaboration.

(x) Before going on to deal with the right to be heard under the County Courts Act, it will be as well to make separate mention of the solicitor's right to appear as advocate in bankruptcy matters. The Bankruptcy Act, 1914, s. 152, saves existing rights of audience in bankruptcy matters. These rights are in the main exercisable by solicitors in the county courts having bankruptcy jurisdiction; but this is not all, as is shown by the case of *Re Barnett* (1885), 15 Q.B.D. 169, which came before a divisional court on appeal from a county court. In this case, a certain J. E. Fox, a solicitor, appeared for the trustee before the divisional court. His opponent was represented by counsel, who made the following objection: "It is a question whether a solicitor has a right of audience in this court when sitting on appeal from the county court in bankruptcy, although, having had the right of audience before the chief judge of bankruptcy, he is to have the like right of audience in bankruptcy matters in the High Court: 46 & 47 Vic., c. 52, s. 151. This court is a court of appeal, and is so treated by the Bankruptcy Rules, 1883. Solicitors had not the right of audience in the Court of Appeal in bankruptcy." To this, Cave, J., replied: "But this is the High Court, and the Bankruptcy Act, 1883, s. 151, enacts that 'Nothing in the Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had at the commencement of this Act, and all solicitors and other persons who had the right of audience before the chief judge in bankruptcy shall have a like right of audience in bankruptcy matters in the High Court.' The present case is a bankruptcy matter in the High Court, and is such as the chief judge in bankruptcy used to hear under the former Act. Before the chief judge under the former Act a solicitor had a right of audience, and therefore we are of opinion that he can be heard in the matter in this court."

Fox was heard and a useful precedent was established. On appeal to the Court of Appeal, counsel appeared for both sides, and the solicitor's right of audience was not again discussed. Two years after this case the Court of Appeal refused to hear a solicitor on objection being taken to his appearance: *Re Elderton*, 4 Morr. Bankruptcy Rep. 36. In this case, Sir James Hannen remarked: " . . . There is no right of audience here. The solicitor who appears is not entitled to address the court. The best course to pursue will be to allow the case to stand over in order to afford the solicitor an opportunity of instructing counsel, when the case can be heard on the merits."

Nevertheless not every qualified solicitor is entitled to a hearing in a Bankruptcy Court.

In *Re Broadhouse* (1867), 36 L.J.R. Bankruptcy 29, Mr. Dale, a qualified solicitor of the Court of Chancery, acting as managing clerk to Messrs. Duignan, Lewis & Lewis, the bankrupt's solicitors, appeared as their clerk and also, as he stated, as their agent, to show cause against an adjudication. The Commissioner refused to hear him on the ground of his being a clerk and adjourned the sitting. Mr. Dale again appeared, having in the interval signed the roll of solicitors of the Birmingham Court of Bankruptcy. The Commissioner again refused to hear him, although the debtor stated in court that he wished Mr. Dale to be heard on his behalf. Mr. Dale stated, in an affidavit made by him for the purposes of appeal, that it had been the constant practice of the Birmingham Court of Bankruptcy to hear managing clerks who were solicitors and that he had himself in fact been heard in that capacity. The argument did not impress the court, Cairns, L.J., saying, "the main object of the court in allowing and being anxious to favour the appearance of the solicitor as representing another person, is that the court should have before it one of its own officers, who on the one hand is under an obligation to the court, because he is an officer of the court, and, on the other hand, is under an obligation, because he is in privity with the suitor, and is the actual person who represents the suitor; and unless that chain of connection is maintained and kept complete, the object of the court in

having the assistance of and in allowing the work of solicitors to be performed, is entirely defeated. Therefore, I think, so long as Mr. Dale claimed to be heard—not as the solicitor for Mr. Broadhouse, but as the clerk of Messrs. Duignan, who were the solicitors of Mr. Broadhouse, so long was the Commissioner justified in refusing to hear him . . . There is no foundation for the argument that Mr. Dale was appearing there doing 'agency business'."

A solicitor cannot then insist on employing his qualified clerk to appear for him in bankruptcy matters. Whether or not he is strictly entitled to employ another solicitor as agent, was not decided, but as we shall see, by analogy with the cases decided under the County Court Act, the right to employ another solicitor as agent would seem to be very doubtful.

The importance of the ordinary county court jurisdiction cannot be overestimated. It will be recalled that by s. 56 of the County Courts Act, 1888 (as amended), a county court has jurisdiction to determine, "all personal actions where the debt demand or damage is not more than £100, whether on balance of account or otherwise, excepting only any action for ejectment, or in which the title to any corporeal or incorporeal hereditaments or to any toll, fair, market or franchise shall be in question, or for any libel, slander or for seduction or breach of promise." In addition, s. 57 allows jurisdiction where a claim is reduced to £100 by reason of a set-off. Section 58 gives jurisdiction in cases relating to a partnership, an intestacy or a legacy where the demand does not exceed £100, and s. 59 allows an action for ejectment when neither the value of the land in question nor the rent exceeds £100 per annum, and in such cases s. 60 allows the court to try the title to corporeal and incorporeal hereditaments, and with certain restrictions gives a consent jurisdiction in more important cases. In addition, county courts have, by s. 67, an equity jurisdiction where the amount of the fund to be dealt with does not exceed £500. This enables them to deal with matters as varied as administration of estates, trusts, mortgages, specific performance, actions for the relief of trustees, advancement of infants, dissolution of partnerships, and so on. By s. 3 of the County Courts Admiralty Jurisdiction Act, 1868, certain county courts are given admiralty jurisdiction in respect of salvage where the property is not over £1,000 or the amount claimed is under £300; towage, necessaries or wages up to £150; damages by collision up to £300, and, by consent, to a greater amount in each case. Nor is this all. "Halsbury's Laws of England," read with the most recent supplement, shows that there are at least sixty-one statutes that give jurisdiction to the county court in special matters. These sixty-one statutes include the Agricultural Holdings Acts, the Rent and Mortgage Interest (Restrictions) Act and various Public Health Acts.

It may be said without exaggeration that whenever a new statute is to be widely applied throughout the length and breadth of the land, the county courts are appealed to, and, not without reason, the county court judges and advocates have unrivalled opportunities of becoming acquainted with local circumstances and conditions, a knowledge of which is so often necessary to ensure the successful working of a new statute.

(xi) Nor must the court's jurisdiction in workmen's compensation matters be overlooked. Cases of workmen's compensation often involve sums of over £1,000. Rule 35 of the rules made under the Workmen's Compensation Act, 1925, reads as follows:—

> "(1) A party to an arbitration under the Act, whether before a committee or an agreed arbitrator, or before a judge or an arbitrator appointed by a judge, may appear—
>
> "(*b*) By any solicitor who would be entitled to appear for such party in an action in the County Court . . .
>
> or with leave in special circumstances any other person."

(xii) The right to plead in a county court action has been carefully examined by our courts and is dependent on s. 72 of the County Courts Act, 1888, which provides that, "it shall be lawful for any party to an action or matter or for a solicitor being a solicitor acting generally in the action or matter for such party *but not* a solicitor retained as an advocate by such first-mentioned solicitor . . . or by leave of the judge for any other person to appear instead of any party to address the court . . . the right of a solicitor to address the court shall not be excluded by reason only that he is in the permanent and exclusive employ of any other solicitor."

The question which immediately arises for consideration is, who is the solicitor "acting generally in the action or matter?" Once more we turn to case law.

Reg. v. *Spooner* (1868), 18 L.T.R. 325, was a case where the defendant's counsel objected to the appearance of one Samuel Leech, as not being the attorney actually employed in the action under 15 & 16 Vic., c. 54, s. 10 (the section of the former County Courts Act which, like the present Act, prohibited one attorney from acting as advocate for another). As there was no change of attorney filed the judge felt bound to uphold the objection and accordingly refused to hear Mr. Leech.

The divisional court (Cockburn, C.J., and Blackburn, J.) held the judge was justified and refused to interfere with his decision, Cockburn, C.J., saying: "the judge proceeded on the belief that Mr. Leech was not the real attorney of the plaintiff." The point came up again in *Bookham* v. *Potter* [1868] L.R. 3, C.P. 490, also decided on s. 10 of 15 & 16 Vic., c. 54. In this case Montague Smith, L.J., is reported to have said: "the only person who is entitled to be heard is the attorney acting generally in the action for the party. The judge is bound to determine that question . . . If he was acting as attorney generally in the action, the fact of his being clerk to another attorney would not preclude his right to be heard." The position was further gone into in *R.* v. *Oxfordshire C.C. Judge* [1894] 2 Q.B. 440; 63 L.J., Q.B. 689; where a rule was issued calling upon the county court judge of Oxford to show cause why he should not hear the applicant, one Addison, as solicitor for one of the parties to an action in such court.

Addison was in the permanent and exclusive employ of T. Mallam & Co. and a duly qualified solicitor. He had the entire management of the proceedings in the action . . . the county court judge found he was not the "solicitor acting generally in the action for the defendant." On the motion for a new trial . . . Mr. Addison . . . claimed to be heard as of right to show cause on behalf of the defendant; and the learned county court judge, while offering to hear him by leave, declined to admit his claim to be heard as of right.

The judgment of Cave, J., in this case is most instructive. He said:—

> "If this had been a *res nova*, I should have found great difficulty in coming to the conclusion that the words in 15 & 16 Vict. c. 54, s. 10, 'it shall be lawful for the party to the suit or other proceedings or for an attorney of one of Her Majesty's Superior Courts of Record being *an* attorney acting generally in the action for such party' mean, 'it shall be lawful for the party to the suit or other proceedings, or for an attorney of one of Her Majesty's Superior Courts of Record being *the* attorney acting generally in the action . . .' But upon consideration of the language used by the judges in *Bookham* v. *Potter*, *Ex parte Rogers* (*ub. sup.*), and in face of the opinion of my brother Collins, I feel that it is not open to me to consider that question, and that I must deal with the construction of that section as if the words used had been 'an attorney . . . being *the* attorney acting generally in the action' . . . there can only be one attorney for a party at a time, and the words 'the attorney for the party' do not include the managing clerk of the attorney in whose name the proceedings in the action are conducted. If under these circumstances I am bound to hold that this is the true construction of 15 & 16 Vict. c. 54, s. 10, I do not see how I can put a different construction on what are practically, if not identically, the same words of the statute of 1888. It has been contended, however, that the words of the statute of 1888, 'the right of a solicitor to address the court shall not be excluded by reason only that he is in the permanent and exclusive employment of any other solicitor,' enable us to favour the appellant. If I could read the words as they stand, a solicitor being *a* solicitor in the action . . . I should think that there were great force in this contention. The words naturally apply to a managing clerk who is himself a solicitor . . . but I think I am precluded from reading the words as they stand. The clause says the right of a solicitor to address the court shall not be excluded by reason only that he is in the permanent and exclusive employ of any other solicitor. But the right of a solicitor who is the managing clerk of the solicitor in the action, and who has had the management and control of the proceedings in the action, is not excluded on the ground specified in the clause, but on the ground that he is not *the* solicitor acting generally in the action. I am therefore compelled to the somewhat absurd conclusion that this clause has no meaning at all and does not in any way affect the construction of the Act . . . I have a strong suspicion that the clause was intended to put an end, in favour of managing clerks who are solicitors, to the question whether they could address the court in matters in which they had been 'acting generally for the party'; but even if this is so, I am obliged to construe the words 'being *a* solicitor acting generally in the action' as meaning the same thing as the words 'being *the* solicitor acting generally in the action.'"

This hesitating language of Mr. Justice Cave leads one to conclude that he decided the case as he did against his better judgment, and that, possibly, if the matter came before a body

not bound by any precedent, the more rational interpretation of the statute, allowing solicitors to send their qualified managing clerks to court, as in fact they often do, would be adopted. From what has been said it follows *a fortiori* that a judge is entitled to refuse to hear a managing clerk who is a solicitor, but who has not taken out a practising certificate: this was illustrated by the case of *Rogers* v. *Metropolitan Board of Health* [1914] W.N. 279, a case under the Workmen's Compensation Act.

It will be further observed that s. 72 of the County Courts Act forbids a solicitor "retained as an advocate" by another to address the court. This prohibition, it is feared, is very often disregarded. It is by no means unknown for one solicitor, in the interests of economy, to instruct another solicitor residing within the jurisdiction of a distant court where an action is pending, to represent him at the hearing of the case. This practice is, however, as we have seen, illegal and open to objection.

Conclusion.

In conclusion it may be said that, seeing a solicitor's right to appear, when it arises from custom, has grown up to meet the exigencies of local practice, no solicitor can know the sum of his rights to appear as an advocate until he is acquainted with this varying local practice. Would it be too much to hope that we may have some day a general inquiry by The Law Society into the resolved practice of the various quarter sessions and other courts that customarily accord a right of audience to solicitors? If the Society could provide us with an annually classified statement of the courts of quarter sessions and other courts that allow this right, we should at least have some means of knowing our rights, and knowing them, we might be able to make greater use of them.

Of the rights of audience depending on statute it will be seen that some are absolute rights, while others are purely in the discretion of the court concerned. In the latter case, where rights are only permissive and therefore ultimately dependent on usage, another official statement of solicitor's rights would be very valuable. Finally, one is tempted to ask, cannot something be done to make it unobjectionable for solicitors to employ their qualified managing clerks, and to instruct members of firms in distant towns to act as advocates for them? It is true that one does not often hear of objections being taken to right of audience of such solicitors, but such objection is always possible as the cases cited in this paper have shown. There is no doubt that constant vigilance is necessary to secure our rights and privileges as solicitors. We are fortunate to have The Law Society as our watchdog. Recent events in connection with the Town and Country Planning Act have shown that it is difficult to secure new rights of audience. The solicitors' existing rights of audience have been well won and their value and importance to the profession and the public has become well established; it behoves us to maintain them integral and intact, and to watch over them in the event of the jurisdiction of the county courts being increased in response to ropular demand for cheaper litigation.

The President remarked that to secure audience for managing clerks would require an Act of Parliament, but that there was no difficulty in the way of employing a solicitor at a distance. The firm handling the case merely gave notice of change of solicitor, and the local solicitor occupied the position of solicitor for the purpose of the hearing.

Mr. C. L. Nordon (London) hailed the lecturer as a Daniel come to judgment, and his paper as one of the most valuable ever contributed to a meeting of the Society. The public were interested, taking their stand upon the words of Magna Carta: "To none will we deny or delay right or justice." Solicitors were skilled in the knowledge and administration of the law and in the practice of that knowledge, and their clients should have every facility for employing their skill in order that their just rights might be preserved.

Mr. Barry O'Brien (London), who claimed that he had appeared before most of the tribunals open to solicitors, said that he foresaw great difficulty in obtaining any real and effective extension of the solicitor's right of audience. He had many friends at the Bar and appreciated the excellent work which the Bar performed, but he was convinced that the members of the judicial bench and of the barristers' profession, deep down in their hearts and minds, had no wish that solicitors should be given extended powers of advocacy in the courts. Without desiring to possess any monopoly and without any feeling of jealousy, the Bar regarded itself as the superior and the solicitors' profession as the inferior. The young man just down from Oxford seeking call to the Bar had even then assimilated the tradition which made him regard himself unquestioningly as of the salt of the earth. The Bar wished to keep the line firmly drawn. The speaker said that he looked forward, not very hopefully, to the fusion of the two professions, which existed in every other country. Advocacy, he observed, was not like law; it was an art and a gift, innate and not acquirable; some solicitors were excellent advocates and some barristers were and always would be indifferent ones.

Mr. E. R. Cook (Secretary) said that this matter had been under consideration in some form or another during the whole time of his long service with The Law Society. He considered that it would be idle for the Bar to say that the question had not to some extent affected their views on the desirability of extending the jurisdiction of the county courts, particularly to the trial of divorce cases. The matter, moreover, was not considered by the legislature from the point of view of solicitors, but from that of the public benefit. Some tribunals where the solicitor did not possess an exclusive right of audience—e.g., the General Medical Council and the Traffic Commission—would be glad if he did, for a solicitor's conduct was controlled and what he said to the court had to be said with authority and care. It was therefore for the benefit of the public that he should have an exclusive right of audience. The Law Society had recently attempted to obtain that right before both these tribunals, but had not succeeded. The matter was one which the Ministers concerned might well take into sympathetic consideration.

Mr. J. C. Harris (Altrincham) criticised the lecturer's statement that an attorney had no right to be present at a preliminary hearing before magistrates. At the preliminary inquiry into all serious criminal charges, he said the magistrates might—and in cases of murder they must—appoint advocates. There was now no revising barrister; he had been replaced by the registration officer, before whom barristers had no right of audience.

Mr. Carlile Davis (Plymouth) urged that it should not go forth that the solicitor's claim to audience was based on any monetary consideration, but that it was made solely in the public benefit. As representative of a national organisation of business men, he had concurred in the drafting of s. 32 of the Rating and Valuation Act, 1925, which gave solicitors audience before the quarter sessions on an appeal from a rating. In the debate in the Commons, Mr. Neville Chamberlain, then Minister of Health, had said that he could see the advantage from the public point of view that a solicitor should be able to appear, and so the clause had been inserted. When the Bill had reached the Lords, many Law Lords had entered into the discussion, and the clause had been rejected. The two houses had disagreed on what should happen, and the late Lord Cave had co-operated with the Minister to reach a compromise by which a limit of £100 should be fixed. When the representative of the business men's organisation had asked whether the clause allowed a solicitor to appear before quarter sessions presided over by a recorder, members had called him to order and the clause had been passed with the words "a committee of quarter sessions." The speaker suggested that solicitors practising in boroughs should approach their recorder for leave to appear before him in appeals involving less than £100, in order to secure the public benefit and advance the interests of commerce by cheapening litigation.

Mr. A. C. Hillier (Bath) read the following paper:—

The High Cost of Litigation in England, its Causes and Remedies.

Mr. President, Ladies and Gentlemen,

Before commencing my paper, would you allow me to say how gratified I am that a distinguished member of our Society from the West Country fulfils the office of President of this important body for the ensuing year. May I extend to Mr. Barry my heartiest congratulations and my very best wishes for a happy year of office. I am sure my colleagues in Bath will permit me to join them also in this expression.

Now to endeavour to deal with the subject upon which I have embarked. It is really much too vast and detailed a subject to be dealt with adequately in the course of a short paper, but I will in the time at my disposal deal with it as exhaustively as I am able.

That the subjects of a kingdom should be able to have their differences settled speedily, efficiently, and, above all, cheaply, is in my submission a very essential thing in the life of that kingdom. I would be glad to meet the man who is bold enough to assert that that desirable state of affairs exists in this country of ours. Those who have not already done so, I would recommend to read the Report of the London Chamber of Commerce dated April, 1930, the further Memorandum dated July, 1931, and the Memoranda of The Law Society and of the Bar Council in reply to the first report of the Chamber. I would also urge you to consider carefully the expressions coming almost daily from the Bench on this subject, and I venture to suggest you will agree with me that

the cost of litigation in this country is far too high; so high, in fact, as to place it beyond the reach of any but the very poor, who can indulge in litigation for nothing, and the very rich, and these remarks apply as well to the higher courts as to the county courts. For example, I have selected three county court cases from my files utterly at random, except that I took the trouble to select cases which presented no particular difficulty and where the issue was perfectly clear. The total amount in dispute on the three cases amounted to £144 10s., and the legal costs involved in settling these comparatively trivial disputes amounted to no less formidable a figure than £326 7s. 3d. You will agree that this sort of thing needs explanation. Now, whenever this subject has been mentioned in the past, so far as I am able to discover, the explanation advanced by those who have attempted to deal with it is that the high cost is occasioned by witnesses' fees and other disbursements altogether outside the control either of the solicitors or counsel engaged. I am afraid I emphatically disagree, and I cannot understand why this explanation has been made. I have tested this question of witnesses' fees, and in the three cases they amounted in all to £28 6s., or approximately 8.6 per cent. of the total costs involved. I have also carried out a test, taking twenty cases at random, ten in the High Court and ten in the county court, and the average of these cases was that the witnesses' expenses amounted to 10.2 per cent. of the total taxed costs. Now these percentages do not appear to me to be very excessive, although I am free to admit there is ample room for improvement, particularly in regard to formal and expert witnesses, whose oral testimony, with its attendant expense, ought to be avoided and could be avoided. For example, it ought on all occasions to be possible to avoid the calling of a surveyor, who merely says, quite unchallenged, "I prepared this plan and it is accurate," at a cost ranging anywhere between three and five guineas. Sometimes the evidence of such a witness is useful in regard to viewpoints and similar matters, but it ought not to be necessary to call an expensive qualified man for such matters as those, as to which any witness of average intelligence could speak. There will have to be a severe curtailment of such evidence, and indeed of all formal evidence. These matters ought to be dealt with and settled by the parties long before the hearing. My attention has been directed to r. 32, which it has been suggested provides for these matters. I disagree, because r. 32 is discretionary and ought to be abolished in favour of a much more stringent rule, and which must be made compulsory.

Criticism which is merely destructive without being constructive is, you will agree, of no use. I have therefore, I can assure you, with no little expenditure of time I cannot afford, endeavoured to trace where the most wasteful expenditure occurs. Dealing for a moment with the county court, I have taken the trouble to analyse many files of papers, and one fact emerges most clearly, and that is that in cases where counsel is employed the costs are on an average double those in which the solicitor himself conducts the case throughout. To take one example. Case on simple contract, with a hearing extending just over two hours. Amount at stake £52 10s. Plaintiff succeeded and his bill of costs taxed and allowed at £106 6s. 3d. Formidable figures, those. Defendant's own costs approximately £75. I propose to ignore those, but the dreadful fact emerges that in addition to his own costs the defendant was obliged to pay his adversary's costs amounting to more than double the amount at stake. Now, I have analysed those costs, and I find that they are made up as follows:

	£	s.	d.
Witnesses' expenses	14	2	0
Court fees	5	15	0
Counsel's fees	13	7	0
Solicitors' costs	73	2	3
	£106	6	3

Now this gave me the clue for which I was seeking. Witnesses' expenses cannot be said to be too high, especially as two witnesses were obliged to travel a distance. Court fees are, of course, much too high, but they form a comparatively small percentage of the total. Counsel's fees are not too high. They include settling the pleadings as well as the total conduct of the case in court. The solicitors' costs seemed to me to be the difficulty, and I went into them very thoroughly. Now I disagree emphatically with those who watch over our destinies in agreeing to the 33⅓ per cent. increase being reduced to 25 per cent. in litigious work. That is entirely unfair. Any person who takes the trouble to go into the very niggardly scales of costs in the courts must inevitably come to the conclusion that for the work we as solicitors do in litigious matters we are grossly underpaid, and in point of fact, those of you who undertake litigious work will know that the conduct of an action, that is, the efficient conduct of an action, entails a vast amount of work which is not covered by any scale and for which we receive no remuneration at all. That is why I object strongly to the reduction, because I feel it was only made in a gesture to appease in some measure the London Chamber of Commerce, who had such a very just cause to espouse. However that may be, let us see how this money was expended. Bear in mind, if you please, that it was a comparatively trivial county court action with the amount at stake only £52 10s. and the costs on one side alone over £106. Now I took the trouble to go very carefully into this matter. In this particular case counsel was employed for the plaintiff. I took the trouble to re-draft the bill of costs for taxation exactly as it would appear had the solicitor for the plaintiff taken the case throughout in person, as he was perfectly competent to do, and I discovered this most significant fact, that had no counsel been employed, that is, had the solicitor in question taken the case himself throughout, including the settling of the simple pleadings, the advising of himself on evidence, as he should be able to, and the conducting of the case in court itself, the bill of costs as allowed on taxation would have amounted, instead of the formidable figure of over £106, to the much more reasonable sum of £53 3s. 11d., although that sum, representing as it does more than the amount at stake, is bad enough in all conscience. Leaving aside altogether the actual cash which went into counsel's pocket and that of his clerk, as to which I shall have something to say later on, the actual cost, that is the costs necessarily entailed and allowed on taxation in accordance with the scale, of imparting to counsel what the solicitor himself knew of the case, of adequately instructing counsel, and so forth, amounted to no less a sum than £49 2s. 4d. This gave me the clue which I had been seeking, and I made further researches, extending over a large number of cases. In the result I found that the employment of counsel in a case in the courts sends the costs up by an average figure of 50 per cent., leaving out of account witnesses' expenses and other necessary out-of-pocket payments. I examined the rules very carefully, and I found that they are framed in such a way as deliberately to invite us to employ counsel. I have not the slightest personal objection to this so long as the public does not suffer. I take the view that we, as officers of the Supreme Court, are servants of the public, and it is the interests of the public we should study, instead of any selfish interests of ourselves or of the Bar. Now, the solicitor who was in this particular case acting for the successful plaintiff, was quite competent to conduct the case himself, both as regards the pleadings and the hearing in court, and had he done so the poor unsuccessful defendant would have been saved a sum of about £50. Is there any reason why, because the successful litigant should have insisted upon the employment of counsel, the unsuccessful should be mulcted to this extent? I think not. One item alone will suffice to make good my complaint about the rules. Had the solicitor conducted the case in person he would have been entitled to charge an item called "Minutes of Fact and Argument," which entails drafting the minutes of law and fact he intends to use in the court, corresponding to a brief. In addition it has to be typed in proper form. Now, if counsel is employed, by some magic I cannot pretend to explain, and perhaps someone will do so for me, the item becomes "Instructions for Brief." For "Minutes of Fact and Argument," which entails much more work, the solicitor gets the fee of £2 2s., whereas, if he employs counsel, for less work he gets on scale alone a fee of £5 5s., but this fee is almost always increased in the discretion of the registrar, and in the case under review it was allowed at £10 10s. Now, if there be any adequate explanation for this state of affairs, I would be glad to hear it. That is only one example. Time will not permit of my mentioning others, although I shall be pleased to acquaint anyone interested with many similar. Now, the £2 2s. item is, of course, very much too small, and the £10 10s. item was not too large for the work involved, but it is the necessity for that work under the present system to which I take exception. That is to say, the work it is necessary for us under the present system to undertake in order that we may adequately instruct counsel. It really means that almost every item of work is duplicated, and it comes to this, that the present system entails the employment of two or more men to do the work of one. Now that state of affairs is surely undesirable in the highest degree.

Do not let me be misunderstood. This is not meant to be, and in fact it is not, an attack on any persons or body of persons. I am merely attacking an effete and wasteful and obsolete system. Supposing for one moment that the system cannot be done away with, which is a doctrine to which I cannot subscribe, then I do urge strongly that if this wasteful expenditure is to be allowed to continue, then under no circumstances ought an unsuccessful litigant to be saddled with the burden of it. If a profligate litigant wishes to incur a great deal of unnecessary expense, let him by all means do

so, but let not his adversary suffer. To this end I advocate that counsel's fees should be rigidly controlled by a scale which shall have some relation either to the amount in dispute or the amount recovered on judgment, and which scale shall be inalterable under any circumstances. That is, that taxing masters should have no discretion to increase. That ought not to affect the Bar, because a wealthy litigant will still be able to employ what are called "fashionable counsel," but he will do so with the knowledge that he will have to bear the major portion of the cost in any event. I notice the Bar Council in their report express the view that no difficulty ever arises in obtaining the services of junior or leading counsel at reasonable fees, and as those who were employed to frame the new Rules would see to it that the scale of fees was a reasonable one, it is difficult to see who, if anyone, would be injured by the change. In my view the cost of leading counsel should never be visited upon an unsuccessful litigant unless he himself had employed a leader also, or perhaps in some very exceptional case, which it ought to be possible to define by a simple rule.

So far as the county court is concerned, I do not think the cost of employing counsel ought to be visited upon an unsuccessful litigant in any circumstances whatever. Counsel's fees themselves I have always found reasonable, but it is the wicked other wasteful expenditure, to which I have already drawn attention, which occasions the excessive cost.

The rule which is known as the "two-thirds rule" ought in my judgment to be abolished entirely. No kind of logical or business argument exists for its retention. The Bar Council, in its report, paragraph 9, dealing with this question has (I say it with respect) not done itself justice. They say —these are the exact words: "This matter is not of real importance." It may not be to some persons, but it is a matter of the gravest importance to the public. Can anyone in the world devise any kind of reasonable argument why a perfectly competent junior counsel should for a reasonable fee conduct a case by himself in a competent manner and without difficulty on one day, should, on the next, when he has taken silk, become physically incapable of doing so without the assistance of a junior barrister, who in the very large majority of cases does little or nothing in court (it is not his fault, there is little or nothing to do, as his leader conducts the case, and indeed he is paid to do it), and who, for some other reason which again I cannot fathom, is entitled as of right to two-thirds of his leader's fee? If a litigant wants to indulge in this sort of profligacy, then as this is popularly supposed to be a free country, let him by all means do so, but let him never be enabled to force someone else to pay for it.

I want to emphasise one other matter. The antique system whereby a successful litigant is enabled to compel his opponent to pay for the clerical staff employed by counsel ought to be abolished. I can see neither rhyme nor reason in it. Counsel's remuneration ought to be put upon a much more satisfactory basis than it now is. They ought to be able to sue for their fees in the same way as any other professional man, and be liable also to the same extent as anyone else for neglect of duty.

I agree with the view expressed by the London Chamber of Commerce that arrangements ought to be made whereby litigants and lawyers should know some time in advance the exact day when the case in which they are interested will come on for hearing, and to that end that a business man should be engaged to make the arrangements with the assistance of the present officials. The only argument I can see against that proposal is that when a business man becomes an official he rapidly acquires the official mind and loses in efficiency.

Courts ought to sit for much longer hours than they do, and they ought in all cases, when there is a reasonable chance of disposing of a case in one day, to sit as long as is necessary to do so. The old fiction of a "legal day" should be abolished.

The ancient custom called the "Long Vacation" is productive of a great deal of delay and expense, which ought to be avoided. I express no view as to whether the duties of the Bench and the Bar are so arduous as to compel them to take this very long annual holiday of ten weeks in addition to all the other periods when the courts are closed from time to time, but assuming that they are, then these vacations ought to be taken in rotation in the same way as the rest of the community, so that the work of the courts shall proceed uninterruptedly throughout the year.

The present Rules of Court, under which we are compelled to work, are contained in four huge volumes weighing in the aggregate no less than 13 lbs. They total no less than 6,851 pages of closely-printed matter. It ought to be possible to reduce these to a fraction of their bulk, with a great saving of expense. A small panel of solicitors ought to be appointed to go into this question. They should of necessity consist of gentlemen who are daily engaged in conducting litigation and who have a first-hand knowledge of their subject. With the greatest respect for the Bench and the Bar, this is not a matter which ought to be entrusted to them, because by the very nature of things they have little opportunity of observing the work which it is necessary for us to do in order to present a case properly for trial. Pleadings and Discovery of Documents, etc., ought to be automatic. It ought not to be necessary for us to be running to the court all the time while an action is prepared for trial. One humble example occurs to me in regard to the unnecessary work involved under the present rules. To sue on a simple liquidated demand in the county court no less than seven documents are necessary. These could be considerably simplified and all incorporated in one simple form.

The court fees, both in the county court and in the higher courts, are very much too high and need drastic revision. Two examples will suffice. To hand a writ over the counter, have a rubber stamp put on it, a number assigned to it, and the names of the parties entered in a book costs 30s. To hand a simple document over the counter of the Central Office accompanied by two affidavits extending to thirteen folios, to leave them there for ever, where they are simply filed away and never seen by mortal eye again, costs no less a sum than £2 13s. Can these fees be justified?

Summarising as far as I have gone, my emphatic view is that it is not the Bar, or ourselves, who are responsible for the dreadfully high cost of litigation in this country, it is the utterly effete, wasteful and ponderous system which needs the most drastic revision. And if we are to put an end to the almost daily criticisms which are levelled at us on account of these high costs we have got to face that fact, and do something at once to remedy matters. All that happens at the moment is that this old system gets a patching up occasionally, and that is all. We must recognise that it has long outlived its usefulness and is not in the least degree suited to modern conditions. The public at the moment, and particularly the commercial public, shuns, and quite properly so, indulgence in litigation as if it were the plague. That state of affairs is, in my view, most undesirable.

Further, judges ought to be appointed to the High Court and the other superior courts, and additional county court judges ought to be appointed and the present circuits revised. Most county court judges are vastly overworked during the time they have to work, and all of them are much underpaid. This will, of course, be productive of some additional expense, but not at the expense of litigants. The expense ought to be borne by the State. It is the business of the State to see that these things are remedied.

We, the Bar and ourselves, are merely doing our best to carry out as efficiently as possible an archaic and utterly wasteful system.

Those of you whose business takes you to the Law Courts will have noticed a person perambulating up and down carrying a notice board exhorting the people to "Arbitrate, not Litigate." If I were obliged to choose between the two evils I should advise a client to litigate every time. Arbitration is infinitely the more costly and ponderous. It is vastly more inefficient than litigation, and I have seen more thousands of pounds wasted in litigation arising out of arbitrations than I think any other cause. Added to this, may I mention that in one recent arbitration in which I was interested the arbitrator's fees alone amounted to three hundred guineas. Before arbitration can possibly compete with litigation as a means of the settlement of differences the Arbitration Act, 1889, will have to be amended so as to be absolutely unrecognisable.

I seriously advocate that the right of audience of solicitors in the courts should be considerably extended. We ought to have unlimited right of audience in the Assize Courts, in the High Court, at Quarter Sessions, and in various other courts, such as the Tolzey Court at Bristol. What better person is there in the world to argue a case before these courts than the solicitor who has all along conducted the case, who knows all the witnesses, who has the facts at his finger tips, and knows precisely, long before the hearing, just what matters have to be decided. Under the present system counsel have the papers in their hands only a few days before trial, and there is, as I have said before, the most wasteful expenditure, amounting to an average of one-half of the profit costs involved, entailed in imparting our knowledge to counsel and in imparting to him on paper, always a most difficult task, what we ourselves know of the whole matter, and instructing him in what fashion we want our case conducted. I have spoken on this subject to very many friends of mine at the Bar, some of whom, I am pleased to say, now hold high judicial office, and they advance one argument, and one only, against my contention. That is, that there is only a very small number of solicitors

competent to conduct a case in court, and if their right of audience were extended the procedure would lose considerably in efficiency. I disagree. The average solicitor who has never been near a court of law to conduct a case is equally as competent to do so as a barrister in the like predicament. I would like to see a special class of advocates created, called "Special Pleaders," or something of that kind, who would consist of solicitors well versed in the proper and efficient conduct of cases in the courts, and who would be granted a certificate by the Lord Chancellor on production of a memorial in a prescribed form, accompanied by a certificate from a county court judge and testifying to the solicitor's ability to conduct a case properly. The personal conduct of litigation by solicitors is at present confined to the county courts. It is almost a specialised branch of our profession, but he would be a bold person who would venture to suggest that the average solicitor who has had a good deal of experience in the personal conduct of litigation in the county courts would not be capable of undertaking a case, or, for that matter, hundreds of cases, in the higher courts. The number of gentlemen so qualified would be quite small, and the Bar would not be very adversely affected, but the saving to the middle-class public, to whom the Poor Persons Rules are closed, would be tremendous, and they would thereby be enabled to prosecute their just claims without the dreadful and haunting fear that if they commence an action they are risking the whole of their substance. Allow me to emphasise that it would be the saving of work that would produce the saving of expense.

The jurisdiction of the county court ought to be very much extended. This would necessitate my previous recommendation that the existing circuits should be revised and additional judges appointed. The county court should be given unlimited jurisdiction in divorce cases, particularly those of the category known as "undefended," 99 per cent. of which present no difficulty whatever. They are matters of pure routine. Any person of average intelligence and with little or no training would be capable of presenting them to the court, and the present procedure whereby, unless a person is either a very poor man or a very rich one, he cannot get a divorce at all, ought to be abolished for all time. At the present time, with the necessity of briefing and instructing counsel, and so forth, it is a practical impossibility on scale charges to conduct even an undefended divorce case for any less sum than between £50 and £100. Almost always more near the latter figure than the former. Further, certain other cases in well-defined categories should be brought within the county court jurisdiction, particularly those where the demand is liquidated and the issue clear.

Cases at the present moment take far too long in their disposal. I exclude the county court from that assertion. Counsel's speeches ought severely to be limited in their duration. I have seen some most dreadful examples of wasteful expenditure entailed under this fiction that the court is being assisted. It may be, but the swift and economical flow of justice is being impeded. I do not for one moment argue that undue prolixity is deliberately indulged in, but the procedure has grown slack in the extreme, and I have seen hours and hours and hours of time wasted in the argument of a perfectly futile case.

It is fondly imagined, I think, by those in authority, that the assize system is productive of a saving of cost to the litigant in cases where the majority of the witnesses live near an assize town. This, in my view, is a fallacy. Of all the wasteful and inefficient survivals from the Middle Ages and beyond, the assize system in vogue in this country is about the very worst. I strongly advocate the total abolition of this system. A great deal of the delay and expense attendant upon litigation in the Royal Courts of Justice is occasioned by this pernicious system, whereby large numbers of His Majesty's judges are at frequent intervals taken from London to go on circuit, with all the pomp and circumstance almost as though we were living in the times of the Domesday Book. I recommend that in place of this system the country should be divided into carefully thought-out and well-divided areas, in the same way as the county courts are, over each of which districts a permanently resident judge should preside. He would hold his courts regularly, and either in one place, or he might travel about in the same way that county court judges do now. He would deal with all civil actions coming within his jurisdiction in that area, and he would deal with crime also as and when it occurred. We should thus get much cheaper and speedier justice, both from a civil and a criminal point of view. The present system is productive of a vast wastage of time and money. Not only would the civil litigant, as represented by the public, benefit, but the charged criminal would be brought much more speedily to his trial and not kept in prison waiting for sometimes as much as three months as under the present system. I know the Rules have been amended to provide in some measure for this evil, but my remedy would abolish it altogether. Indeed, I am not at all certain that it would not be possible to do away completely with the present division between the High Court and the county court. If the country were divided into sufficiently manageable areas, I can see no reason why one judge should not sit in his own area to deal with both High Court work, county court work, and crime. He would sit on certain well-defined days each month for the purpose of each. The quarter sessions further might very well be merged in any such scheme. All this, of course, with a great saving of expense. The cost of additional judges would, of course, have to be met, but the cost to the Exchequer would be very small compared with the millions of money which are poured out by that august body annually, and for which no kind of adequate return can be seen by anyone, least of all the poor unfortunate taxpayer.

Rights of appeal should be rigidly curtailed. I have seen many cases where a litigant has been unable to obtain justice because his opponent has the longer pocket. Severe limitation should be placed on the rights of appeals from the High Court and the Court of Appeal, and should be most rigidly enforced by the rules and by the judges themselves.

One more matter in conclusion. The futility of the present rules is exemplified by the present procedure in appeals to the House of Lords *in forma pauperis*. For my sins I recently undertook such a matter, fondly imagining that as the poor man (who is called a "pauper" throughout the proceedings) has to establish that he owns not more than £5 worth of property in the world, all I should be called upon to pay would be my expenditure of time. Lo! and behold, the actual out-of-pocket expenditure incurred was precisely £44 4s. 3d., and not a penny was expended which need not have been. For one item alone, namely, the printing of seventy-two copies of volumes of the proceedings in the courts below I had to pay £28 12s., and my law printers charged me cost price. The appeal was heard by six law lords who each had a copy of the handsome volume. I supplied my opponents with two copies, or rather the officials did. I kept one for myself as a keepsake, and I have been endeavouring ever since to discover what the officials did with the other sixty-three copies. Of course, the procedure is a sham and should be destroyed at once by a stroke of the pen. I am relieved to be informed that the authorities have these rules under consideration. I should think they had, and hope they will not be many days in making short work of them.

I am informed that the subject of "Fusion" does not come within the scope of this paper, and therefore I suppose I must not deal with it. I am, however, going to say this, that in my profound opinion, it would be productive of a great benefit to the community. It is my view that the present system is wasteful in the highest degree. I speak to you as a comparatively young man, but as one who has seen a great deal of the many aspects of this subject, and I say that in my opinion the fusion of our two professions has got to come, and from the point of view of the public, the sooner the better. At all events I hope to live to see the day when it shall be an accomplished fact.

We have got to face this dreadful fact, that unless a man is a pauper, in which case he gets his law for nothing at our expense and that of the Bar, or unless he is a man of very comfortable means, it is impossible for him to obtain his civil rights through the medium of the courts. It is not our fault, it is the fault of the system. Let us, for goodness sake, give up our endeavours to patch the wretched thing up. Let us consign it to where it belongs by reason of its antiquity, the grave, and build up a newer and better in its place.

Sir ROGER GREGORY outlined what the Council had done in the matter. Shortly after the vacation of 1930, he said, the Lord Chancellor had received a deputation from the London Chamber of Commerce, the memorandum of which body expressly stated that it had no fault to find with solicitors' costs. The Law Society, on an invitation by the Lord Chancellor, had submitted a memorandum prepared by a very strong committee, which had found that of the total costs of an action only one-quarter represented solicitors' charges. Out of this quarter the solicitor had to provide a staff, pay overhead charges and do all the onerous work of putting the case before the court; it was not an excessive remuneration for skilled work which entailed so much responsibility. The Council had also recommended that the summons for directions should be deferred until after the pleadings had been delivered and the questions raised in the action had been clearly defined, so that the masters might eliminate long strings of expert witnesses, heaps of rustling maps, and other things which did not conduce to the effective trial of the action. These suggestions, supported by the Bar Council, had been the foundation of the New Procedure Rules. These rules might be good or bad, but they should at any rate be given a chance, for they represented an honest attempt to make litigation

quicker, cheaper and more effective. If it were found that they were not altogether perfect, they could be amended; at all events the Society should give the Council credit for having done what it could and for the intention to do what it could to see that litigation was not unduly expensive. After all, litigation must be paid for, and solicitors must have proper remuneration; the only question was whether money should be spent on things that were not necessary or on things which represented its full value.

The revision of the rules had unfortunately been postponed by the death of Sir Thomas Willes Chitty, an artist in procedure, who would undoubtedly have turned the ponderous "White Book" into a readable and more or less interesting document. The work was, however, in hand, and Sir Roger hoped that it might result in the production of an effective set of rules which the author of the paper might live to read. He pointed out, by way of correction, that forty copies of the "appendix" were not now required; the authorities had performed an operation for appendicitis and would accept a reasonable number necessary for the assistance of the court. Sir Roger suggested that the younger members of the Society, before asking for greater rights of audience, should use those which they had. Solicitors were, he said, always instructing counsel when they might appear themselves; they did not appear before the adjournment to the judge and they did not appear in the county court.

Mr. E. A. Bell (London) said that the Lord Chancellor had asked the Council whether it would be possible for bills of costs, at the option of the party delivering them, to be stated in a lump sum rather than in the complicated detail of which all solicitors were aware and from which everyone desired to escape. By the inveterate inertia of antiquated, encrusted, old-time custom, the Committee had informed the Lord Chancellor that it was impossible. The speaker ventured to assert to the younger members that it was not only possible but reasonable to frame a bill of costs showing on one side the disbursement and on the other side the sum which the solicitor considered to represent his efforts.

Mr. J. G. Harris (Altrincham) suggested that much time and trouble would be saved if depositions were taken in shorthand.

The business of the Provincial Meeting was brought to a close, according to custom, by a number of votes of thanks to the hosts and the authors of papers.

Societies.

Solicitors' Benevolent Association.

Annual General Meeting.

Mr. W. Arthur Coleman (Leamington) presided at the Annual General Meeting of this Association held at Bristol on 5th October. In his speech on the motion to receive the report and accounts, he addressed a grave warning to the members present. He pointed out that the prophecy made by Mr. E. F. Dent at the last annual meeting had been fulfilled, and that the number of cases whom it had been necessary to relieve during the past year had exceeded by eight the number relieved during the previous year. For the fourth consecutive year the income had been less than the expenditure, and the balance had had to be redressed out of legacies, the deficit for the closing year being £700. The directors had therefore been unable to augment the capital funds of the Association. Next year, said the Chairman, would certainly be even harder, judging by the number of fresh applications that the Association had received since the end of the financial year in June.

Mr. C. G. May (London), who moved the re-election, with thanks, of the auditors, added that the membership had decreased during the past year by seventy or eighty, a figure which indicated an increase in the number of people who could not afford the guinea subscription, and which foreshadowed an increase in the number of demands.

While acknowledging a number of very generous legacies and donations, the Chairman appealed earnestly for increased support in the face of the difficulties ahead. He recognised the usual disadvantage that speakers at the annual meeting were preaching to the converted, but he pointed out that every member constantly came into contact with other solicitors. Surely it was possible to use these contacts, he asked, to induce non-members to join and members to increase their subscription.

Dr. Barry pointed out the practical difficulty of getting a membership much higher than 70 per cent. in any town. This was the figure of Bristol's membership, third only in the country to Maidstone and York. He had written to a number of solicitors in an attempt to increase the membership, and, while he had managed to enlist a few, several had told him that they had joined since the last meeting. He urged the directors to spend beyond their means if they had to, asserting that money spent in this way was always refunded somehow.

Mr. E. R. Cook warmly complimented Mr. Coleman on the trouble he had taken in coming up from Leamington so often in order to attend meetings of the board and the financial committee, and the Chairman, in thanking him, paid a tribute to the admirable work of the staff, including Mr. Thomas Gill, (the Secretary), and Miss K. Passmore (the Lady Visitor).

Rules and Orders.

The Rating and Valuation Act (Assessment Appeals) (Amendment) Rules, 1932, dated October 6, 1932, made by the Secretary of State under section 34 of the Rating and Valuation Act, 1925 (15 & 16 Geo. 5. c. 90).

In pursuance of the powers conferred upon me by Section 34 of the Rating and Valuation Act, 1925, I hereby make the following Rules:—

1. These Rules may be cited as the Rating and Valuation Act (Assessment Appeals) (Amendment) Rules, 1932.

2. For the words "While the Solicitors' Remuneration Act General Order, 1919,(*) continues in force, these fees may be increased by 33⅓ per centum." in paragraph 2 (1) of Part I of the Schedule to the Rating and Valuation Act (Assessment Appeals) Rules, 1927,(†) there shall be substituted the words "These fees may be increased by the same percentage as is for the time being authorized in respect of business in the Supreme Court by Order LXV Rule 10 (2) of the Rules of the Supreme Court."(‡)

Dated this 6th day of October, 1932.

John Gilmour,
One of His Majesty's Principal Secretaries of State.

(*) S.R. & O. 1919 (No. 1878) II p. 461. (†) S.R. & O. 1927 (No. 416) p. 1517.
(‡) *See* S.R. & O. 1932, No. 514.

The Costs of Poor Prisoners' Defence (Amendment) Regulations, 1932, dated October 6, 1932, made by the Secretary of State in pursuance of section 5 of the Costs in Criminal Cases Act, 1908 (8 Edw. 7. c. 15).

In pursuance of Section 5 of the Costs in Criminal Cases Act, 1908,(*) I hereby make the following Regulations:—

1. For proviso (*b*) to Regulation 1 (1) and to Regulation 1 (2) of the Costs of Poor Prisoners' Defence Regulations, 1930,(†) there shall be substituted the following proviso:—

"(*b*) These fees may be increased by the same percentage as is for the time being authorized in respect of business in the Supreme Court by Order LXV Rule 10 (2) of the Rules of the Supreme Court."(‡)

2. These Regulations may be cited as the Costs of Poor Prisoners' Defence (Amendment) Regulations, 1932.

Given under my hand at Whitehall this 6th day of October, 1932.

John Gilmour,
One of His Majesty's Principal Secretaries of State.

(*) 8 E. 7. c. 15. (†) S.R. & O. 1930 (No. 1065) p. 431.
(‡) *See* S.R. & O. 1932, No. 514.

Legal Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. Alexander Fitzmaurice Gilchrist to be Official Solicitor to the Supreme Court of Judicature, in the place of Mr. C. R. Bradburne, deceased.

The Lord Chancellor has appointed The Honourable Mr. Justice Luxmoore, a judge of the High Court, to be the Appeal Tribunal constituted under s. 92A of the Patents and Designs Act, 1907.

Professional Announcement.

(2s. per line.)

The Solicitors' Mortgage Society, Ltd. (formed by Solicitors for Solicitors), invites particulars of Funds or Securities. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

MESSRS. GREENE & UNDERHILL, solicitors, of 31, Bedford-row, W.C.1, are removing their offices from that address to 23, Bedford-row, W.C.1, on and after the 31st October. There is no change in the firm.

THE SOLICITORS' MANAGING CLERKS' ASSOCIATION.

A lecture will be held in the Lincoln's Inn Hall, by kind permission of the Benchers, on Friday, 28th October, when Mr. C. D. Myles will deliver a lecture on "Charities as Affecting the Chancery Division." The chair will be taken at 7 o'clock precisely by The Hon. Mr. Justice Eve.

INCORPORATED AUCTIONEERS' NEW HEADQUARTERS.

Seven years' ceaseless activity to raise the level of the auctioneering and estate agency profession in this country was celebrated on Thursday last, when the new headquarters of the Incorporated Society of Auctioneers and Landed Property Agents were opened by The Right Hon. Walter Runciman, P.C., M.P., President of the Board of Trade.

Since its formation in 1923, the activities of the Society have increased so enormously that, with a membership of 2,650, twenty-one branches at home and overseas and six junior centres, the old headquarters in Finsbury-square were quite inadequate. The new headquarters at 34 Queen's Gate will, however, provide ample accommodation and a convenient and comfortable meeting-place for members. The greater part of the first floor becomes the handsome council chamber, while other parts of this fine house have been turned into offices for officials of the society and the clerical staff.

A LEGAL AID SOCIETY.

Questions relating to the status and methods of the General Legal Aid Society, Great James-street, arose out of a recent case before Sir Chartres Biron, at Bow-street Police Court. It appeared from the evidence given by a solicitor, who described himself sorry that he had had anything to do with it, that the society advertised offering to give free legal advice. When a man wrote to the society advice would be given founded on the said solicitor's opinion for which he did not charge. The society's remuneration took the form of a 2s. in the £ impost on all sums recovered, no charge being made when nothing was recovered. "The whole story," said Sir Chartres, "is a very queer one. There is a mysterious society which seems to advertise for business. Apparently they get nothing if their clients lose an action, and 10 per cent. if they win. The solicitor, as he seems to see now, very foolishly lent himself to it."

Mr. W. G. Herbert, who is retiring from the position of Chief Clerk to the Edmonton County Court at the end of this month, was last Tuesday presented by Judge Crawford with an illuminated address and cheque from the court staff, and a cheque from the legal profession and general public. Mr. Herbert has had fifty years' service at the court.

Mr. G. J. I. Miller has been elected an Honorary Scholar of Balliol College. Mr. Miller was educated at the Worcester College for the Blind and at Balliol College. He was placed in the first class in the Final Honour School of Jurisprudence, and was *proxime accessit* for the Winter Williams Law Scholarship and was awarded a special prize.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I Mr. JUSTICE EVE. Non-Witness	Mr. JUSTICE MAUGHAM. Witness. Part II.
M'nd'y Oct. 24	Mr. Hicks Beach	Mr. Ritchie	Mr. Jones	Mr.*Hicks Beach
Tuesday .. 25	Andrews	Blaker	Hicks Beach	Blaker
Wednesday 26	Jones	More	Blaker	*Jones
Thursday.. 27	Ritchie	Hicks Beach	Jones	Hicks Beach
Friday 28	Blaker	Andrews	Hicks Beach	*Blaker
Saturday .. 29	More	Jones	Blaker	Jones

DATE.	GROUP II. Mr. JUSTICE BENNETT. Witness Part I.	Mr. JUSTICE CLAUSON. Witness Part II.	Mr. JUSTICE LUXMOORE. Witness Part I.	Mr. JUSTICE FARWELL. Non-Witness.
M'nd'y Oct. 24	Mr.*Blaker	Mr. Ritchie	Mr.*Andrews	Mr. More
Tuesday .. 25	*Jones	*Andrews	*More	Ritchie
Wednesday 26	*Hicks Beach	More	*Ritchie	Andrews
Thursday.. 27	*Blaker	*Ritchie	Andrews	More
Friday 28	Jones	Andrews	*More	Ritchie
Saturday .. 29	Hicks Beach	More	Ritchie	Andrews

*The Registrar will be in Chambers on the e days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 10th November, 1932.

	Middle Price 19 Oct. 1932.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
English Government Securities.			
Consols 4% 1957 or after	109¼	3 13 3	3 8 6
Consols 2½%	77	3 4 11	—
War Loan 5% Assented 1952 or after	102⅜	3 8 11	3 7 8
**War Loan 4½% 1925-45	102	—	—
Funding 4% Loan 1960-90	109½	3 13 1	3 9 4
Victory 4% Loan (Available for Estate Duty at par) Average life 31 years	108¾	3 13 7	3 10 7
Conversion 5% Loan 1944-64	117	4 5 6	3 5 4
Conversion 4½% Loan 1940-44	112½	4 0 0	2 12 8
Conversion 3½% Loan 1961 or after	100¾	3 9 6	3 9 2
Local Loans 3% Stock 1912 or after	89⅝	3 6 11	—
Bank Stock	345	3 9 6	—
India 4½% 1950-55	107xd	4 4 1	3 19 0
India 3½% 1931 or after	90	3 17 9	—
India 3% 1948 or after	78	3 16 11	—
Sudan 4½% 1939-73	107	4 4 1	3 5 9
Sudan 4% 1974 Redeemable in part after 1950	106	3 15 6	3 10 11
Transvaal Government 3% Guaranteed 1923-53 Average life 13 years	100	3 0 0	3 0 0
Colonial Securities.			
*Canada 3% 1938	101	2 19 5	—
*Cape of Good Hope 4% 1916-36	101	3 19 2	—
*Cape of Good Hope 3½% 1929-49	100	3 10 0	3 10 0
Ceylon 5% 1960-70	112	4 9 3	4 4 10
*Commonwealth of Australia 5% 1945-75	106	4 14 4	4 7 9
Gold Coast 4½% 1956	106	4 4 11	4 1 10
*Jamaica 4½% 1941-71	102	4 8 3	4 4 0
*Natal 4% 1937	101	3 19 2	3 15 1
*New South Wales 4½% 1935-45	101	4 9 1	4 1 6
*New South Wales 5% 1945-65	106	4 14 4	4 7 9
*New Zealand 4½% 1945	105	4 5 9	3 19 5
*New Zealand 5% 1946	108	4 12 7	4 3 9
Nigeria 5% 1950-60	112	4 9 3	4 0 2
*Queensland 5% 1940-60	104	4 16 2	4 7 10
*South Africa 5% 1945-75	111	4 10 1	3 18 2
*South Australia 5% 1945-75	106	4 14 4	4 7 9
*Tasmania 5% 1945-75	106	4 14 4	4 7 9
*Victoria 5% 1945-75	106	4 14 4	4 7 9
*West Australia 5% 1945-75	106	4 14 4	4 7 9
Corporation Stocks.			
Birmingham 3% 1947 or after	88	3 8 2	—
*Birmingham 5% 1946-56	114	4 7 9	3 14 0
*Cardiff 5% 1945-65	110	4 10 11	4 0 0
Croydon 3% 1940-60	94	3 3 10	3 17 8
*Hastings 5% 1947-67	114	4 7 9	3 14 0
Hull 3½% 1925-55	98	3 11 5	3 12 8
Liverpool 3½% Redeemable by agreement with holders or by purchase	100	3 10 0	3 10 0
London County 2½% Consolidated Stock after 1920 at option of Corporation	75	3 6 8	—
London County 3% Consolidated Stock after 1920 at option of Corporation	89	3 7 5	—
Manchester 3% 1941 or after	88	3 8 2	—
Metropolitan Water Board 3% "A" 1963-2003	89	3 7 5	3 8 3
Do. do. 3% "B" 1934-2003	90	3 6 8	3 7 5
*Middlesex C.C. 3½% 1927-47	100	3 10 0	3 10 0
Do. do. 4½% 1950-70	110	4 1 10	3 14 6
Nottingham 3% Irredeemable	86	3 9 9	—
*Stockton 5% 1946-66	113	4 8 6	3 15 8
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	104	3 16 11	—
Gt. Western Rly. 5% Rent Charge	115	4 6 11	—
Gt. Western Rly. 5% Preference	76½	6 10 9	—
L. Mid. & Scot. Rly. 4% Debenture	99½	4 0 5	—
L. Mid. & Scot. Rly. 4% Guaranteed	80½	4 19 5	—
Southern Rly. 4% Debenture	99½	4 0 5	—
Southern Rly. 5% Guaranteed	105½	4 14 9	—
Southern Rly. 5% Preference	69½	7 3 10	—
‡L. & N.E. Rly. 4% Debenture	90½	4 8 5	—
‡L. & N.E. Rly. 4% 1st Guaranteed	66½	6 0 4	—

*Not available to Trustees over par.

†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Company's Ordinary Stocks for the past year.

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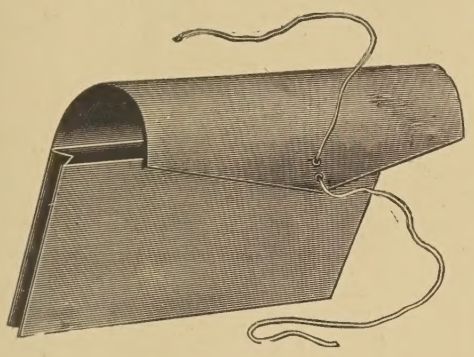

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„ **29**	Brief	$14 \times 5\frac{1}{2} \times 2$ ..	21	0	75	0
„ **30**	Deed	$12 \times 9\frac{1}{2} \times 2$ ..	24	0	85	0
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106, Cheapside, E.C.2 & 164, Bethnal Green Rd., E.2.

BY ORDER OF EXECUTORS.

STIMSON & SONS

will Sell by Auction at the
LONDON AUCTION MART, 155, QUEEN VICTORIA STREET, E.C.
on THURSDAY NEXT, OCTOBER 27th, at 2.30 o'clock,
the following
LEASEHOLD GROUND RENTS of £188 8s. 6d. PER ANNUM.

£24 1s. 6d. per annum on 241, Portobello-road, 1 to 5, Tavistock-mews, Notting Hill. Term 12¾ years.
£2 per annum on 83, Hereford-road, Bayswater. Term 18 years.
£15 17s. 6d. per annum on 40, 42 and 44, Langler-road, Kensal Rise. Term 56 years.
£18 12s. per annum on 25, 27, 33, 35, Navarino-road, Dalston. Term 20 years.
£13 10s. per annum on 228, 230 and 232, Well-street, Hackney. Term 12 years.
£7 per annum on 171, 179, 181 and 183, Malmesbury-road, Bow. Term 18 years.
£5 7s. per annum on 462, Old Ford-road, Bow. Term 31 years.
£9 15s. per annum on 11 to 19 (odd), Ranwell-street, Old Ford. Term 30 years.
£19 6s. per annum on 13 to 27 (odd), Ashwell-street, Old Ford. Term 24 years.
£6 9s. per annum on 21 to 31 (odd), Gardener's-road, Old Ford. Term 24½ years.
£3 10s. per annum on 37 to 41 (inclusive), Carpenters-road, Stratford. Term 30 years.
£10 per annum on stabling, Canterbury-mews, Penton-place, Newington Butts. Term 11 years.
£20 per annum on 37 to 44 (inclusive), Lorrimore-square, and 26, Chapter-road, Walworth. Term 12¾ years.
£33 0s. 6d. per annum on 2 to 16 (even), Court Yard, 1 to 17 (inclusive), The Grove, High-street, Eltham. Term 12 years.

Particulars of the Solicitors:
Messrs. BOLTON, JOBSON AND YATE-LEE, 2, Temple Gardens, E.C.4, and 7, Gray's Inn-square, W.C.1,
and of the Auctioneers: STIMSON & SONS, 25, Ironmonger Lane, Cheapside, E.C.2, and 12, New Kent Road, S.E.1.

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Solicitors: Messrs. DALSTON, SONS & ELLIMAN, 21, Southampton-street, Bloomsbury-square, W.C.1.
Auction Particulars with Conditions of Sale and Orders to View may be obtained of the Auctioneers, HARRODS LTD., 62-64, Brompton-road, S.W.1.

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Solicitors: Messrs. Louch, Willmott & Clarke, Langport, Somerset.
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Secretary—J. Courtney Buchanan, C.B.E.

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